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FEDERAL RULES OF APPELLATE PROCEDURE

Amended

Effective December 1, 2006~~6~~7

and

TENTH CIRCUIT RULES

Effective January 1, 2007~~7~~8

TABLE OF CONTENTS

TITLE I. APPLICABILITY OF RULES 1
Fed. R. App. P. Rule 1. Scope of Rules; Title 1
10th Cir. R. 1 1
1.1 Scope of rules 1
1.2 Organization 1
1.3 Citation 1
1.4 Internal references 1
1.5 Effective date 2
Fed. R. App. P. Rule 2. Suspension of Rules 3
10th Cir. R. 2 3
2.1 Suspension of local rules 3

TITLE II. APPEAL FROM A JUDGMENT OR ORDER OF A DISTRICT COURT . 4
Fed. R. App. P. Rule 3. Appeal as of Right – How Taken 4
10th Cir. R. 3 6
3.1 Signing notice of appeal 6
3.2 Preliminary record 6
3.3 Fees 7
3.4 Docketing statement 7
Fed. R. App. P. Rule 3.1. Appeal from a Judgment of a Magistrate Judge in a Civil Case 8
Fed. R. App. P. Rule 4. Appeal as of Right – When Taken 9
Fed. R. App. P. Rule 5. Appeal by Permission 15
Fed. R. App. P. Rule 5.1. Appeal by Leave 17
Fed. R. App. P. Rule 6. Appeal in a Bankruptcy Case from a Final Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel . . 18
10th Cir. R. 6 20
6.1 Appendices in bankruptcy appeals 20
Fed. R. App. P. Rule 7. Bond for Costs on Appeal in a Civil Case 21
Fed. R. App. P. Rule 8. Stay or Injunction Pending Appeal 22
10th Cir. R. 8 24
8.1 Required showing 24
8.2 Emergency or ex parte motions 24
8.3 Applications made to a single judge 25
Fed. R. App. P. Rule 9. Release in a Criminal Case 26
10th Cir. R. 9 27
9.1 Expedited proceedings 27

9.2 Procedures 27
9.3 Response and date at issue 28
9.4 Ruling not law of the case 28
Fed. R. App. P. Rule 10. The Record on Appeal 29
10th Cir. R. 10 31
10.1 Transcripts 31
10.2 Designation of record 32
10.3 Content of record 33
Fed. R. App. P. Rule 11. Forwarding the Record 37
10th Cir. R. 11 39
11.1 Record retained in district court 39
11.2 Record transmitted to court of appeals 39
11.3 Form of record 40
Fed. R. App. P. Rule 12. Docketing the Appeal; Filing a Representation Statement; Filing the Record 42

TITLE III. REVIEW OF A DECISION OF THE UNITED STATES TAX COURT . . 43
Fed. R. App. P. Rule 13. Review of a Decision of the Tax Court 43
Fed. R. App. P. Rule 14. Applicability of Other Rules to the Review of a Tax Court Decision 45
10th Cir. R. 14 45
14.1 Tenth Circuit rules apply 45

TITLE IV. REVIEW OR ENFORCEMENT OF AN ORDER OF AN ADMINISTRATIVE AGENCY, BOARD, COMMISSION, OR OFFICER 46
Fed. R. App. P. Rule 15. Review or Enforcement of an Agency Order – How Obtained; Intervention 46
10th Cir. R. 15 48
15.1 Docketing statement 48
15.2 Intervention 48
Fed. R. App. P. Rule 15.1. Briefs and Oral Argument in a National Labor Relations Board Proceeding 49
Fed. R. App. P. Rule 16. The Record on Review or Enforcement 50
Fed. R. App. P. Rule 17. Filing the Record 51
10th Cir. R. 17 51
17.1 Time for filing 51
17.2 Form 51
Fed. R. App. P. Rule 18. Stay Pending Review 52
10th Cir. R. 18 53

18.1 Applications for stay 53
Fed. R. App. P. Rule 19. Settlement of a Judgment Enforcing an Agency Order in Part 54
Fed. R. App. P. Rule 20. Applicability of Rules to the Review or Enforcement of an Agency Order 55
10th Cir. R. 20 55
20.1 Tenth Circuit rules apply 55

TITLE V. EXTRAORDINARY WRITS 56
Fed. R. App. P. Rule 21. Writs of Mandamus and Prohibition, and Other Extraordinary Writs 56
10th Cir. R. 21 57
21.1 Fees 57

TITLE VI. HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS 58
Fed. R. App. P. Rule 22. Habeas Corpus and Section 2255 Proceedings 58
10th Cir. R. 22 58
22.1 Certificate of appealability 58
22.2 Procedures in death penalty cases 59
22.3 Other rules applicable 60
Fed. R. App. P. Rule 23. Custody or Release of a Prisoner in a Habeas Corpus Proceeding 61
Fed. R. App. P. Rule 24. Proceeding in Forma Pauperis 63
10th Cir. R. 24.1 65
24.1 Prison Litigation Reform Act 65
24.2 Duty of Prisoner Appellant 65

TITLE VII. GENERAL PROVISIONS 66
Fed. R. App. P. Rule 25. Filing and Service 66
10th Cir. R. 25 69
25.1 File stamped copies of papers 69
25.2 Additional copies 69
25.3 Fax filing 69
25.4 Papers subject to being stricken 69
25.5 Electronic Filing 69
Fed. R. App. P. Rule 26. Computing and Extending Time 70
Fed. R. App. P. Rule 26.1. Corporate Disclosure Statement 72
Fed. R. App. P. Rule 27. Motions 73
10th Cir. R. 27 76
27.1 Certification of questions of state law 76

27.2 Summary disposition on motion by a party or the court 76

27.3 Clerk authorized to act on certain motions; required recitation 78
27.4 Motions to extend time 80
27.5 Orders 81
Fed. R. App. P. Rule 28. Briefs 82
Fed. R. App. P. Rule 28.1. Cross-Appeals 85
10th Cir. R. 28 88
28.1 References to appendix or record 88
28.2 Additional requirements 88
28.3 Motions to exceed page limits disfavored 89
28.4 Incorporating by reference disapproved 90
Fed. R. App. P. Rule 29. Brief of an Amicus Curiae 91
10th Cir. R. 29 92
29.1 Amicus briefs on rehearing 92
Fed. R. App. P. Rule 30. Appendix to the Briefs 93
10th Cir. R. 30 95
30.1 Appellant's appendix 95
30.2 Supplemental appendix 97
30.3 Appendix exemptions 97
Fed. R. App. P. Rule 31. Serving and Filing Briefs 98
10th Cir. R. 31 99
31.1 Opening brief for appellant/petitioner 99
31.2 Joint briefing in criminal appeals 99
31.3 Joint briefing in civil appeals 99
31.4 Extensions 100
31.5 Number of copies 100
Fed. R. App. P. Rule 32. Form of Briefs, Appendices, and Other Papers 101
10th Cir. R. 32 104
32(a) Text of briefs 104
Fed R. App. P. Rule 32.1. Citing Judicial Dispositions 105
10th Cir. R. 32.1 Citing Judicial Dispositions 106
Fed. R. App. P. Rule 33. Appeal Conferences 107
10th Cir. R. 33 107
33.1 Mediation conference 107
33.2 Counsel conference 108
Fed. R. App. P. Rule 34. Oral Argument 110
10th Cir. R. 34 111
34.1 Oral argument 111
Fed. R. App. P. Rule 35. En Banc Determination 113

10th Cir. R. 35 114
35.1 En banc consideration 114
35.2 Request in petition for rehearing 114
35.3 Untimely request 114
35.4 Number of copies 115
35.5 Who may vote; en banc panel 115
35.6 Effect of rehearing en banc 115
35.7 Matters not considered en banc 115
Fed. R. App. P. Rule 36. Entry of Judgment; Notice 116
10th Cir. R. 36 116
36.1 Orders and judgments 116
36.2 Publication 116
Fed. R. App. P. Rule 37. Interest on Judgment 117
Fed. R. App. P. Rule 38. Frivolous Appeal – Damages and Costs 118
Fed. R. App. P. Rule 39. Costs 119
10th Cir. R. 39 120
39.1 Maximum rates 120
Fed. R. App. P. Rule 40. Petition for Panel Rehearing 121
10th Cir. R. 40 122
40.1 Reasons for petition 122
40.2 Form; copies 122
40.3 Successive petitions 122
Fed. R. App. P. Rule 41. Mandate: Contents;
Issuance and Effective Date; Stay 123
10th Cir. R. 41 124
41.1 Stay not routinely granted 124
Fed. R. App. P. Rule 42. Voluntary Dismissal 125
10th Cir. R. 42 125
42.1 Dismissal for failure to prosecute 125
42.2 Reinstatement 125
Fed. R. App. P. Rule 43. Substitution of Parties 126
Fed. R. App. P. Rule 44. Case Involving a Constitutional Question
When the United States or the Relevant State Is Not a Party 128
Fed. R. App. P. Rule 45. Clerk's Duties 129
10th Cir. R. 45 130
45.1 Duties 130
45.2 Chief deputy clerk 130
45.3 Office location 130
Fed. R. App. P. Rule 46. Attorneys 131
10th Cir. R. 46 133

46.1 Entry of appearance 133
46.2 Admission to Tenth Circuit bar 134
46.3 Responsibilities in criminal and postconviction cases 135
46.4 Withdrawal 135
46.5 Signing briefs, motions, and other papers; representations to court; sanctions 136
46.6 Discipline of counsel or parties 138
46.7 Student practice 138
Fed. R. App. P. Rule 47. Local Rules by Courts of Appeals 141
10th Cir. R. 47 142
47.1 Advisory committee 142
47.2 Circuit library 143
47.3 Judicial conference 143
Fed. R. App. P. Rule 48. Masters 145

APPENDIX A
FORMS 146
Form 1. Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court 146
Form 2. Notice of Appeal to a Court of Appeals From a Decision of the United States Tax Court 147
Form 3. Petition for Review of Order of an Agency, Board, Commission or Officer 148
Form 4. Affidavit to Accompany Motion for Leave to Appeal in Forma Pauperis 149
Form 5. Notice of Appeal to a Court of Appeals from a Judgment or Order of a District Court or a Bankruptcy Appellate Panel 155
Form 6. Certificate of Compliance with Rule 32(a) 156

TENTH CIRCUIT FORMS 157
10TH CIR. FORM 1. DOCKETING STATEMENT INSTRUCTIONS AND FORM 157
10TH CIR. FORM 2. ENTRY OF APPEARANCE AND CERTIFICATE OF INTERESTED PARTIES UNDER 10TH CIR. R. 46.1 168
10TH CIR. FORM 3. ENTRY OF APPEARANCE — PRO SE 171
10TH CIR. FORM 4. NOTICE THAT COUNSEL HAS MOVED TO WITHDRAW UNDER 10TH CIR. R. 46.4(B)(2) 173
10TH CIR. FORM 5. REPORT OF COUNSEL CONFERENCE UNDER

10TH CIR. R.33.2 175

APPENDIX B
APPELLATE TRANSCRIPT MANAGEMENT PLAN FOR THE TENTH CIRCUIT 176

APPENDIX C
GENERAL ORDER REGARDING SCHEDULING CONFLICTS 180

ADDENDUM I
CRIMINAL JUSTICE ACT PLAN 184

ADDENDUM II
PLAN FOR APPOINTMENT OF COUNSEL IN SPECIAL CIVIL APPEALS 190

ADDENDUM III
PLAN FOR ATTORNEY DISCIPLINARY ENFORCEMENT 192

ADDENDUM IV
RULES GOVERNING COMPLAINTS OF JUDICIAL MISCONDUCT AND DISABILITY AND COMPLAINT FORM 200

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FEDERAL RULES OF APPELLATE PROCEDURE

TITLE I. APPLICABILITY OF RULES

Fed. R. App. P. Rule 1. Scope of Rules; Title

(a) Scope of Rules.

(1) These rules govern procedure in the United States courts of appeals.

(2) When these rules provide for filing a motion or other document in the district court, the procedure must comply with the practice of the district court.

(b) Rules Do Not Affect Jurisdiction. [Abrogated]

(c) Title. These rules are to be known as the Federal Rules of Appellate Procedure.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

10th Cir. R. 1

1.1	**Scope of rules.** These rules supplement the Federal Rules of Appellate Procedure for cases in this court. Parties must comply both with the Federal Rules of Appellate Procedure and with these rules.
1.2	**Organization.** These rules have been organized and numbered to correspond to the Federal Rules of Appellate Procedure. Provisions having no direct relationship to a Federal Rule of Appellate Procedure are in Rule 47.
1.3	**Citation.** These rules are known as the Tenth Circuit Rules. A particular rule should be cited as "10th Cir. R. ___."
1.4	**Internal references.** In these rules, a Tenth Circuit Rule is referred to as "Rule ___." A Federal Rule of Appellate Procedure is referred to as "Fed R. App. P. ___." A Federal Rule of Civil Procedure is referred to as "Fed. R. Civ. P. ___."

1.5 **Effective date.** These rules are effective January 1, 2007~~7~~8, and apply to all procedures that have not been completed before that date.

Fed. R. App. P. Rule 2. Suspension of Rules

On its own or a party's motion, a court of appeals may – to expedite its decision or for other good cause – suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 2

2.1 **Suspension of local rules.** The court may suspend any part of these rules in a particular case on its own or on a party's motion.

TITLE II. APPEAL FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

Fed. R. App. P. Rule 3. Appeal as of Right – How Taken

(a) Filing the Notice of Appeal.

(1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.

(3) An appeal from a judgment by a magistrate judge in a civil case is taken in the same way as an appeal from any other district court judgment.

(4) An appeal by permission under 28 U.S.C. § 1292(b) or an appeal in a bankruptcy case may be taken only in the manner prescribed by Rules 5 and 6, respectively.

(b) Joint or Consolidated Appeals.

(1) When two or more parties are entitled to appeal from a district-court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals.

(c) Contents of the Notice of Appeal.

(1) The notice of appeal must:

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X";

(B) designate the judgment, order, or part thereof being appealed; and

(C) name the court to which the appeal is taken.

(2) A pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.

(3) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

(4) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

(5) Form 1 in the Appendix of Forms is a suggested form of a notice of appeal.

(d) Serving the Notice of Appeal.

(1) The district clerk must serve notice of the filing of a notice of appeal by mailing a copy to each party's counsel of record – excluding the appellant's – or, if a party is proceeding pro se, to the party's last known address. When a defendant in a criminal case appeals, the clerk must also serve a copy of the notice of appeal on the defendant, either by personal service or by mail addressed to the defendant. The clerk must promptly send a copy of the notice of appeal and of the docket entries – and any later docket entries – to the clerk of the court of appeals named in the notice. The district clerk must note, on each copy, the date when the notice of appeal was filed.

(2) If an inmate confined in an institution files a notice of appeal in the manner provided by Rule 4(c), the district clerk must also note the date when the clerk docketed the notice.

(3) The district clerk's failure to serve notice does not affect the validity of the appeal. The clerk must note on the docket the names of the parties to whom the clerk mails copies, with the date of mailing. Service is sufficient despite the death of a party or the party's counsel.

(e) Payment of Fees. Upon filing a notice of appeal, the appellant must pay the

district clerk all required fees. The district clerk receives the appellate docket fee on behalf of the court of appeals.

10th Cir. R. 3

3.1 **Signing notice of appeal.** Every notice of appeal must be signed by the appellant's counsel or, if the appellant is proceeding pro se, by the appellant.

3.2 **Preliminary record.**

(A) **Contents.** When an appeal is filed, the district clerk must promptly send the circuit clerk copies of:

(1) the district court's docket entries;

(2) the notice of appeal;

(3) any motion for extension of time to file the notice of appeal and the dispositive order;

(4) pertinent written reports and recommendations, findings and conclusions, opinions, or orders of a district judge, bankruptcy judge, or magistrate judge;

(5) the district court's final judgment or order from which the appeal is taken; and

(6) all postjudgment motions to reconsider or motions questioning the judgment (*see* Fed. R. App. P. 4(a)(4) and Fed. R. Civ. P. 60(b)), and any order disposing of them.

(B) **Pro Se Cases.** In pro se cases, the district court may send its original file instead of a preliminary record.

(C) **Later filed motions.** The district clerk must supplement the preliminary record with any later filed postjudgment motions to reconsider or motions questioning the judgment, copies of orders disposing of those motions, and copies of the related docket entries. Sending the circuit clerk the preliminary record and any

supplement satisfies the requirements of Fed. R. App. P. 11(e). *See* Rule 11.2(A) for procedures in pro se appeals.

3.3 Fees.

(A) Notification. The district clerk must notify the circuit clerk when the fees are paid or when leave to proceed without prepayment of fees is granted or denied.

(B) Dismissal for failure to comply. An appeal may be dismissed immediately if, within 10 days after filing the notice of appeal, a party fails to:

(1) pay a required fee;

(2) file a timely motion for extension of time to pay the required fee; or

(3) file a timely motion for leave to proceed without prepayment of fees.

(C) Revocation of release. Release pending appeal may be revoked if the docket fee is not paid or if the appeal is not timely pursued. The district court must so advise the defendant and the defendant's attorney when release pending appeal is ordered.

3.4 Docketing statement.

(A) Filing. Within 10 days after filing the notice of appeal, the appellant must file with the circuit clerk a docketing statement on a court approved form (*see* Appendix A, 10th Cir. Form 1).

(B) Number of copies. An original and 4 copies of the docketing statement must be filed~~. But a~~ unless it is submitted per the court's Order regarding *Electronic Submission of Documents and Conversion to an Electronic Case Management System*. *See* www.ca10.uscourts.gov A pro se appellant who has applied for or been granted leave to proceed without prepayment of fees may file only the original.

(C) Omitted issue. An issue not raised in the docketing statement may be raised in appellant's opening brief.

Fed. R. App. P. Rule 3.1. Appeal from a Judgment of a Magistrate Judge in a Civil Case

[Abrogated]

No local rule.

Fed. R. App. P. Rule 4. Appeal as of Right – When Taken

(a) Appeal in a Civil Case.

(1) Time for Filing a Notice of Appeal.

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

(B) When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered.

(C) An appeal from an order granting or denying an application for a writ of error coram nobis is an appeal in a civil case for purposes of Rule 4(a).

(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision or order – but before the entry of the judgment or order – is treated as filed on the date of and after the entry.

(3) Multiple Appeals. If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) Effect of a Motion on a Notice of Appeal.

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 10 days after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment – but before it disposes of any motion listed in Rule 4(a)(4)(A) – the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment altered or amended upon such a motion, must file a notice of appeal, or an amended notice of appeal – in compliance with Rule 3(c) – within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

(5) Motion for Extension of Time.

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 10 days after the date when the order granting the motion is entered, whichever is later.

(6) Reopening the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier;

(C) the court finds that no party would be prejudiced.

(7) Entry Defined.

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Federal Rule of Civil Procedure 58(a)(1) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a); or

(ii) if Federal Rule of Civil Procedure 58(a)(1) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- the judgment or order is set forth on a separate document, or
- 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58(a)(1) does not affect the validity of an appeal from that judgment or order.

(b) Appeal in a Criminal Case.

(1) Time for Filing a Notice of Appeal.

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 10 days after the later of:

(i) the entry of either the judgment or the order being appealed; or

(ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of:

(i) the entry of the judgment or order being appealed; or

(ii) the filing of a notice of appeal by any defendant.

(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision, sentence, or order – but before the entry of the judgment or order – is treated as filed on the date of and after the entry.

(3) Effect of a Motion on a Notice of Appeal.

(A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 10 days after the entry of the order disposing of the last such remaining motion, or within 10 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

(i) for judgment of acquittal under Rule 29;

(ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 10 days after the entry of the judgment; or

(iii) for arrest of judgment under Rule 34.

(B) A notice of appeal filed after the court announces a decision, sentence, or order – but before it disposes of any of the motions referred to in Rule 4(b)(3)(A)

– becomes effective upon the later of the following:

(i) the entry of the order disposing of the last such remaining motion; or

(ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective – without amendment – to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) Motion for Extension of Time. Upon a finding of excusable neglect or good cause, the district court may – before or after the time has expired, with or without motion and notice – extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

(5) Jurisdiction. The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Federal Rule of Criminal Procedure 35(a), nor does the filing of a motion under 35(a) affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under Federal Rule of Criminal Procedure 35(a) does not suspend the time for filing a notice of appeal from a judgment of conviction.

(6) Entry Defined. A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.

(c) Appeal by an Inmate Confined in an Institution.

(1) If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court dockets the first notice.

(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's docketing of the defendant's notice of appeal, whichever is later.

(d) Mistaken Filing in the Court of Appeals. If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005.)

No local rule.

Fed. R. App. P. Rule 5. Appeal by Permission

(a) Petition for Permission to Appeal.

(1) To request permission to appeal when an appeal is within the court of appeals' discretion, a party must file a petition for permission to appeal. The petition must be filed with the circuit clerk with proof of service on all other parties to the district-court action.

(2) The petition must be filed within the time specified by the statute or rule authorizing the appeal or, if no such time is specified, within the time provided by Rule 4(a) for filing a notice of appeal.

(3) If a party cannot petition for appeal unless the district court first enters an order granting permission to do so or stating that the necessary conditions are met, the district court may amend its order, either on its own or in response to a party's motion, to include the required permission or statement. In that event, the time to petition runs from entry of the amended order.

(b) Contents of the Petition; Answer or Cross-Petition; Oral Argument.

(1) The petition must include the following:

(A) the facts necessary to understand the question presented;

(B) the question itself;

(C) the relief sought;

(D) the reasons why the appeal should be allowed and is authorized by a statute or rule; and

(E) an attached copy of:

(i) the order, decree, or judgment complained of and any related opinion or memorandum, and

(ii) any order stating the district court's permission to appeal or finding that the necessary conditions are met.

(2) A party may file an answer in opposition or a cross-petition within 7 days after the petition is served.

(3) The petition and answer will be submitted without oral argument unless the court of appeals orders otherwise.

(c) Form of Papers; Number of Copies. All papers must conform to Rule 32(c)(2). Except by the court's permission, a paper must not exceed 20 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 5(b)(1)(E). An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

(d) Grant of Permission; Fees; Cost Bond; Filing the Record.

(1) Within 10 days after the entry of the order granting permission to appeal, the appellant must:

(A) pay the district clerk all required fees; and

(B) file a cost bond if required under Rule 7.

(2) A notice of appeal need not be filed. The date when the order granting permission to appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(3) The district clerk must notify the circuit clerk once the petitioner has paid the fees. Upon receiving this notice, the circuit clerk must enter the appeal on the docket. The record must be forwarded and filed in accordance with Rules 11 and 12(c).

(As amended Apr. 29, 2002, eff. Dec. 1, 2002.)

No local rule.

Fed. R. App. P. Rule 5.1. Appeal by Leave under 28 U.S.C. § 636(c)(5)

[Abrogated]

No local rule.

Fed. R. App. P. Rule 6. Appeal in a Bankruptcy Case from a Final Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel

(a) Appeal From a Judgment, Order, or Decree of a District Court Exercising Original Jurisdiction in a Bankruptcy Case. An appeal to a court of appeals from a final judgment, order, or decree of a district court exercising jurisdiction under 28 U.S.C. § 1334 is taken as any other civil appeal under these rules.

(b) Appeal From a Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel Exercising Appellate Jurisdiction in a Bankruptcy Case.

(1) Applicability of Other Rules. These rules apply to an appeal to a court of appeals under 28 U.S.C. § 158(d) from a final judgment, order, or decree of a district court or bankruptcy appellate panel exercising appellate jurisdiction under 28 U.S.C. § 158(a) or (b). But there are 3 exceptions:

(A) Rules 4(a)(4), 4(b), 9, 10, 11, 12(b), 13-20, 22-23, and 24(b) do not apply;

(B) the reference in Rule 3(c) to "Form 1 in the Appendix of Forms" must be read as a reference to Form 5; and

(C) when the appeal is from a bankruptcy appellate panel, the term "district court," as used in any applicable rule, means "appellate panel."

(2) Additional Rules. In addition to the rules made applicable by Rule 6(b)(1), the following rules apply:

(A) Motion for Rehearing.

(i) If a timely motion for rehearing under Bankruptcy Rule 8015 is filed, the time to appeal for all parties runs from the entry of the order disposing of the motion. A notice of appeal filed after the district court or bankruptcy appellate panel announces or enters a judgment, order, or decree – but before disposition of the motion for rehearing – becomes effective when the order disposing of the motion for rehearing is entered.

(ii) Appellate review of the order disposing of the motion requires the party,

in compliance with Rules 3(c) and 6(b)(1)(B), to amend a previously filed notice of appeal. A party intending to challenge an altered or amended judgment, order, or decree must file a notice of appeal or amended notice of appeal within the time prescribed by Rule 4 – excluding Rules 4(a)(4) and 4(b) – measured from the entry of the order disposing of the motion.

(iii) No additional fee is required to file an amended notice.

(B) The Record on Appeal.

(i) Within 10 days after filing the notice of appeal, the appellant must file with the clerk possessing the record assembled in accordance with Bankruptcy Rule 8006 – and serve on the appellee – a statement of the issues to be presented on appeal and a designation of the record to be certified and sent to the circuit clerk.

(ii) An appellee who believes that other parts of the record are necessary must, within 10 days after being served with the appellant's designation, file with the clerk and serve on the appellant a designation of additional parts to be included.

(iii) The record on appeal consists of:

- the redesignated record as provided above;
- the proceedings in the district court or bankruptcy appellate panel;
- and a certified copy of the docket entries prepared by the clerk under Rule 3(d).

(C) Forwarding the Record.

(i) When the record is complete, the district clerk or bankruptcy appellate panel clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

(ii) All parties must do whatever else is necessary to enable the clerk to assemble and forward the record. The court of appeals may provide by rule or order that a certified copy of the docket entries be sent in place of the redesignated record, but any party may request at any time during the pendency of the appeal that the redesignated record be sent.

(D) Filing the Record. Upon receiving the record – or a certified copy of the docket entries sent in place of the redesignated record – the circuit clerk must file it and immediately notify all parties of the filing date.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 6

6.1 **Appendices in bankruptcy appeals.** Rules 30.1, 30.2, and 30.3 apply to all bankruptcy appeals.

Fed. R. App. P. Rule 7. Bond for Costs on Appeal in a Civil Case

In a civil case, the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal. Rule 8(b) applies to a surety on a bond given under this rule.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

No local rule.

Fed. R. App. P. Rule 8. Stay or Injunction Pending Appeal

(a) Motion for Stay.

(1) Initial Motion in the District Court. A party must ordinarily move first in the district court for the following relief:

(A) a stay of the judgment or order of a district court pending appeal;

(B) approval of a supersedeas bond; or

(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) Motion in the Court of Appeals; Conditions on Relief. A motion for the relief mentioned in Rule 8(a)(1) may be made to the court of appeals or to one of its judges.

(A) The motion must:

(i) show that moving first in the district court would be impracticable; or

(ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) A motion under this Rule 8(a)(2) must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in

which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

(E) The court may condition relief on a party's filing a bond or other appropriate security in the district court.

(b) Proceeding Against a Surety. If a party gives security in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the district court and irrevocably appoints the district clerk as the surety's agent on whom any papers affecting the surety's liability on the bond or undertaking may be served. On motion, a surety's liability may be enforced in the district court without the necessity of an independent action. The motion and any notice that the district court prescribes may be served on the district clerk, who must promptly mail a copy to each surety whose address is known.

(c) Stay in a Criminal Case. Rule 38 of the Federal Rules of Criminal Procedure governs a stay in a criminal case.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 8

8.1 **Required showing.** No application for a stay or an injunction pending appeal will be considered unless the applicant addresses all of the following:

(A) the basis for the district court's or agency's subject matter jurisdiction and the basis for the court of appeals' jurisdiction, including citation to statutes and a statement of facts establishing jurisdiction;

(B) the likelihood of success on appeal;

(C) the threat of irreparable harm if the stay or injunction is not granted;

(D) the absence of harm to opposing parties if the stay or injunction is granted; and

(E) any risk of harm to the public interest.

8.2 **Emergency or ex parte motions.**

(A) **Emergency relief.** Any motion that requests a ruling within 48 hours after filing must be plainly marked "EMERGENCY" and accompanied by a certificate stating:

(1) the reason the motion was not filed earlier;

(2) the date the underlying order was entered; and

(3) the time and date the order becomes effective;

(4) the telephone numbers and ~~electronic mail~~email addresses~~,~~ ~~if~~ for all counsel of record and where available, ~~of opposing counsel~~unrepresented parties.

(B) **Ex parte relief.** Any motion that requests the court to act ex parte must include a certificate stating the reason it was not possible to

provide notice to the other parties.

(C) **Notice to clerk.** If a motion for emergency relief is contemplated, the movant must notify the clerk in advance at the earliest practical time so that arrangements can be made for timely submission to the court.

8.3 **Applications made to a single judge.**

(A) **Emergency.** Application to a single judge for a stay of a judgment or order pending appeal is disfavored except in an emergency.

(B) **Contents.** An application made to a single judge must demonstrate:

(1) that notice of the application — including when, where, and to which judge the application was made and the reason for submission to a single judge — was furnished to other parties; or

(2) what efforts were made to furnish notice to other parties, or else the reasons why notice should not be required.

Fed. R. App. P. Rule 9. Release in a Criminal Case

(a) Release Before Judgment of Conviction.

(1) The district court must state in writing, or orally on the record, the reasons for an order regarding the release or detention of a defendant in a criminal case. A party appealing from the order must file with the court of appeals a copy of the district court's order and the court's statement of reasons as soon as practicable after filing the notice of appeal. An appellant who questions the factual basis for the district court's order must file a transcript of the release proceedings or an explanation of why a transcript was not obtained.

(2) After reasonable notice to the appellee, the court of appeals must promptly determine the appeal on the basis of the papers, affidavits, and parts of the record that the parties present or the court requires. Unless the court so orders, briefs need not be filed.

(3) The court of appeals or one of its judges may order the defendant's release pending the disposition of the appeal.

(b) Release After Judgment of Conviction. A party entitled to do so may obtain review of a district-court order regarding release after a judgment of conviction by filing a notice of appeal from that order in the district court, or by filing a motion in the court of appeals if the party has already filed a notice of appeal from the judgment of conviction. Both the order and the review are subject to Rule 9(a). The papers filed by the party seeking review must include a copy of the judgment of conviction.

(c) Criteria for Release. The court must make its decision regarding release in accordance with the applicable provisions of 18 U.S.C. §§ 3142, 3143, and 3145(c).

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 9

9.1 **Expedited proceedings.**

(A) **Release order.** Review of a district court's release order is generally expedited.

(B) **Deferred ruling.** After reasonable notice, the court may defer ruling on a motion for release after a judgment of conviction until it disposes of the underlying direct appeal.

9.2 **Procedures.** Within 10 days after filing the notice of appeal or motion for release, the party seeking relief must file:

(A) a memorandum containing:

(1) a statement of facts necessary for an understanding of the issues presented;

(2) the grounds for relief, including citation to relevant authorities; and

(3) a statement of the defendant's custodial status and reporting date as relevant — the court must be notified of any change in custody status pending the review process; and

(B) two copies of an appendix containing:

(1) the district court's docket entries;

(2) all release orders or rulings, together with the reasons (findings and conclusions) given by the magistrate judge or the district judge for the action taken;

(3) any motion filed in the district court on the issue of release, and relevant memoranda in support or opposition;

(4) transcripts of any relevant proceeding if the factual basis for the action taken is questioned;

(5) the judgment of conviction, if review is sought under Fed. R. App. P. 9(b); and

(6) other relevant papers, affidavits, or portions of the district court record.

9.3 **Response and date at issue.** Within 10 days after the Rule 9.2 memorandum is filed, the opposing party should file a response or notify the court that a response will not be filed. The matter will be considered at issue after the opposing party has been given reasonable notice and an opportunity to respond.

9.4 **Ruling not law of the case.** Neither of the following constitutes law of the case:

(A) a decision of a motion for release; or

(B) a decision of an appeal from a district court's order on release made before final disposition of the direct criminal appeal.

Fed. R. App. P. Rule 10. The Record on Appeal

(a) Composition of the Record on Appeal. The following items constitute the record on appeal:

(1) the original papers and exhibits filed in the district court;

(2) the transcript of proceedings, if any; and

(3) a certified copy of the docket entries prepared by the district clerk.

(b) The Transcript of Proceedings.

(1) Appellant's Duty to Order. Within 10 days after filing the notice of appeal or entry of an order disposing of the last timely remaining motion of a type specified in Rule 4(a)(4)(A), whichever is later, the appellant must do either of the following:

(A) order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary, subject to a local rule of the court of appeals and with the following qualifications:

(i) the order must be in writing;

(ii) if the cost of the transcript is to be paid by the United States under the Criminal Justice Act, the order must so state; and

(iii) the appellant must, within the same period, file a copy of the order with the district clerk; or

(B) file a certificate stating that no transcript will be ordered.

(2) Unsupported Finding or Conclusion. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion.

(3) Partial Transcript. Unless the entire transcript is ordered:

(A) the appellant must – within the 10 days provided in Rule 10(b)(1) – file a statement of the issues that the appellant intends to present on the appeal and must serve on the appellee a copy of both the order or certificate and the statement;

(B) if the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 10 days after the service of the order or certificate and the statement of the issues, file and serve on the appellant a designation of additional parts to be ordered; and

(C) unless within 10 days after service of that designation the appellant has ordered all such parts, and has so notified the appellee, the appellee may within the following 10 days either order the parts or move in the district court for an order requiring the appellant to do so.

(4) Payment. At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript.

(c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript Is Unavailable. If the transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 10 days after being served. The statement and any objections or proposed amendments must then be submitted to the district court for settlement and approval. As settled and approved, the statement must be included by the district clerk in the record on appeal.

(d) Agreed Statement as the Record on Appeal. In place of the record on appeal as defined in Rule 10(a), the parties may prepare, sign, and submit to the district court a statement of the case showing how the issues presented by the appeal arose and were decided in the district court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is truthful, it – together with any additions that the district court may consider necessary to a full presentation of the issues on appeal – must be approved by the district court and must then be certified to the court of appeals as the record on appeal. The district clerk must then send it to the circuit clerk within the time provided by Rule 11. A copy of the agreed statement may be filed in place of the appendix required by Rule 30.

(e) Correction or Modification of the Record.

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) on stipulation of the parties;

(B) by the district court before or after the record has been forwarded; or

(C) by the court of appeals.

(3) All other questions as to the form and content of the record must be presented to the court of appeals.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 10

10.1 Transcripts.

(A) Appropriate transcripts.

(1) ***Appellant's duty.*** The appellant must provide all portions of the transcript necessary to give the court a complete and accurate record of the proceedings related to the issues on appeal.

(a) When sufficiency of the evidence is raised, the entire relevant trial transcript must be provided.

(b) When sufficiency of the evidence is not raised, appellant should order only the relevant portions of the transcript and enter into stipulations that will avoid or reduce the need for transcripts.

(c) Appellant must omit the examination of jurors unless

specifically at issue on appeal.

(2) ***No transcript ordered.*** An appellant who does not intend to order a transcript must so state on a transcript order form filed within 10 days after filing the notice of appeal, and must serve a copy on the appellee, the circuit clerk, and the district clerk.

(B) Ordering transcripts.

(1) ***Order form.*** The transcript order must be made on a form provided by the district court and must comply with Fed. R. App. P. 10(b).

(2) ***Reporter's duty.*** Upon receipt of a properly completed transcript order, the reporter must:

(a) acknowledge receipt of the order;

(b) state on the form an anticipated date of completion within the time set by the Appellate Transcript Management Plan for the Tenth Circuit (*see* Appendix B); and

(c) promptly send a copy of the order form to the circuit clerk.

(3) ***Completion.*** A transcript order is not complete until satisfactory financial arrangements have been made with the reporter.

(C) Preparing, filing, and delivering transcripts.

(1) ***Preparation and filing.*** The Appellate Transcript Management Plan for the Tenth Circuit governs the preparation and filing of transcripts for cases on appeal. *See* Appendix B.

(2) ***Delivery.*** When the transcript is complete, the court reporter must:

(a) deliver the original to the requesting party or to counsel later appointed;

(b) file a certified copy with the district clerk; and

(c) notify the circuit clerk.

10.2 Designation of record.

(A) Appointed counsel. In appeals in which any appellant is represented by appointed counsel — including companion and consolidated appeals — a designation of record must be filed in district court. No Rule 30.1 appendix is required.

(1) ***Filing.*** The appellant's designation of record must be filed within 10 days after filing the notice of appeal.

(2) ***Appellee's designation.*** The appellee may file an additional designation within 10 days after service of the appellant's designation.

(B) Retained counsel. In appeals in which all appellants are represented by retained counsel — including companion and consolidated appeals — no designation is required and the record will be presented in an appendix prepared by the appellant. *See* Rule 30.1. Retained counsel includes counsel for national, state, or local government entities. If appellee's counsel is appointed, Rule 30.2(A) also applies.

(C) Pro se cases. In pro se cases, no designation is required. The district clerk will prepare a pro se record. *See* Rule 11.2.

(D) Nonparties. A district court party who does not intend to file a brief on appeal may not file a designation of record.

10.3 Content of record.

(A) Essential items. Counsel must designate a record on appeal that is sufficient for considering and deciding the appellate issues. Only essential parts of the district court record should be designated for the record on appeal.

(B) Inadequate record. The court need not remedy any failure by counsel to designate an adequate record. When the party asserting an issue fails to provide a record sufficient for considering that

issue, the court may decline to consider it.

(C) **Required contents.** Every record on appeal sent to this court must include:

(1) the last amended complaint and answer, or the indictment or information and any superseding indictment or information;

(2) the final pretrial order;

(3) pertinent written reports and recommendations, findings and conclusions, opinions, or orders of a district judge, bankruptcy judge, or magistrate judge, or, if the findings and conclusions were made orally, a copy of the transcript pages reproducing those findings and conclusions;

(4) in a social security appeal, the entire administrative record;

(5) the decision or order from which the appeal is taken;

(6) all jury instructions when an instruction is an issue on appeal, as well as proposed instructions that were refused; when a finding or conclusion is an issue on appeal, proposed findings and conclusions that were refused;

(7) the notice of appeal; and

(8) the district court's docket entries.

(D) **Additional record items.**

(1) ***Evidence; instructions.*** If an appeal is based on a challenge to the admission or exclusion of evidence, the giving or failure to give a jury instruction, or any other ruling or order, a copy of the pages of the reporter's transcript must be included in the record to show where the evidence, offer of proof, instruction, ruling or order, and any necessary objection are recorded.

(2) ***Documents.*** When the appeal is from an order disposing of a motion or other pleading, the motion, relevant portions of

affidavits, depositions and other supporting documents (including any supporting briefs, memoranda, and points of authority), filed in connection with that motion or pleading, and any responses and replies filed in connection with that motion or pleading must be included in the record.

(3) ***Presentence report.*** The presentence investigation report must be included if the appeal is from a sentence imposed under 18 U.S.C. § 3742. *See* Rule 11.3(E).

(4) ***Other.*** Other items, such as trial exhibits and transcript excerpts, must be included when they are relevant to an issue raised on appeal and are referred to in the brief.

(5) ***Addendum of exhibits.*** Copies of relevant trial exhibits released by the district court before appeal but referred to in a party's brief may be presented in an addendum to the brief. The addendum must not contain originals of exhibits; only one copy may be filed.

(E) **Exclusions.** The following items may not be included in the record on appeal without the court's permission — and a motion to include any of them must show relevance to the appellate issues:

- appearances;
- bills of costs;
- briefs, memoranda, and points of authority, except as specified in (D)(2);
- certificates of service;
- depositions, interrogatories, and other discovery matters, unless used as evidence;
- lists of witnesses or exhibits;
- notices and calendars;
- procedural motions or orders;

- returns and acceptances of service;
- subpoenas;
- summonses;
- setting orders;
- unopposed motions granted by the trial court;
- nonfinal pretrial reports or orders; and
- suggestions for voir dire.

Fed. R. App. P. Rule 11. Forwarding the Record

(a) Appellant's Duty. An appellant filing a notice of appeal must comply with Rule 10(b) and must do whatever else is necessary to enable the clerk to assemble and forward the record. If there are multiple appeals from a judgment or order, the clerk must forward a single record.

(b) Duties of Reporter and District Clerk.

(1) Reporter's Duty to Prepare and File a Transcript. The reporter must prepare and file a transcript as follows:

(A) Upon receiving an order for a transcript, the reporter must enter at the foot of the order the date of its receipt and the expected completion date and send a copy, so endorsed, to the circuit clerk.

(B) If the transcript cannot be completed within 30 days of the reporter's receipt of the order, the reporter may request the circuit clerk to grant additional time to complete it. The clerk must note on the docket the action taken and notify the parties.

(C) When a transcript is complete, the reporter must file it with the district clerk and notify the circuit clerk of the filing.

(D) If the reporter fails to file the transcript on time, the circuit clerk must notify the district judge and do whatever else the court of appeals directs.

(2) District Clerk's Duty to Forward. When the record is complete, the district clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the district clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

(c) Retaining the Record Temporarily in the District Court for Use in Preparing the Appeal. The parties may stipulate, or the district court on motion

may order, that the district clerk retain the record temporarily for the parties to use in preparing the papers on appeal. In that event the district clerk must certify to the circuit clerk that the record on appeal is complete. Upon receipt of the appellee's brief, or earlier if the court orders or the parties agree, the appellant must request the district clerk to forward the record.

(d) [Abrogated.]

(e) Retaining the Record by Court Order.

(1) The court of appeals may, by order or local rule, provide that a certified copy of the docket entries be forwarded instead of the entire record. But a party may at any time during the appeal request that designated parts of the record be forwarded.

(2) The district court may order the record or some part of it retained if the court needs it while the appeal is pending, subject, however, to call by the court of appeals.

(3) If part or all of the record is ordered retained, the district clerk must send to the court of appeals a copy of the order and the docket entries together with the parts of the original record allowed by the district court and copies of any parts of the record designated by the parties.

(f) Retaining Parts of the Record in the District Court by Stipulation of the Parties. The parties may agree by written stipulation filed in the district court that designated parts of the record be retained in the district court subject to call by the court of appeals or request by a party. The parts of the record so designated remain a part of the record on appeal.

(g) Record for a Preliminary Motion in the Court of Appeals. If, before the record is forwarded, a party makes any of the following motions in the court of appeals:

- for dismissal;
- for release;
- for a stay pending appeal;

- for additional security on the bond on appeal or on a supersedeas bond; or

- for any other intermediate order –

the district clerk must send the court of appeals any parts of the record designated by any party.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 11

11.1 **Record retained in district court.** In appeals in which an appendix is required by Rule 30, the district clerk will notify the parties and the circuit clerk when the record is complete (i.e., when the appellant certifies that no transcript will be ordered or the transcript is filed). The original record will remain in the district court, and the appellant must file the appendix when the appellant's opening brief is filed. *See* Rules 30 and 31.

11.2 **Record transmitted to court of appeals.**

(A) **Record.** In a pro se appeal and in an appeal in which an appellant is represented by appointed counsel, the district clerk must send the record to the circuit clerk as required by Fed. R. App. P. 11(b). The record must include any transcript that has been filed for the appeal.

(B) **Original file.** In a pro se appeal in which the district court denies the appellant permission to proceed without prepayment of fees or denies a certificate of appealability, the district clerk may transmit the district court's original file, instead of the record, to the circuit clerk. If the circuit court grants permission to proceed without prepayment of fees, the original file may be returned to the district clerk and the circuit court may order transmission of the record under (A).

11.3 **Form of record.** The record must be assembled as follows:

(A) **Fastening; cover.** The record must be fastened together securely in one or more volumes. Each volume must have a cover page in the following form:

RECORD ON APPEAL

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

Court of Appeals No. _____
District Court No. _____

_____ ,
Plaintiff(s)- Appellant(s) or Appellee(s)

vs.

_____ ,
Defendant(s)- Appellant(s) or Appellee(s)

Volume

(B) **Index.** The record on appeal, other than the reporter's transcripts, need not be paginated. The first page of each document must bear a numbered index tab. A copy of the district court's docket sheet, which must appear immediately after the cover page of the first volume, will serve as the index.

(C) **Transcript.** Each volume of the reporter's transcript must be a separate volume of the record and must contain the complete reporter's index and reporter's pagination. The transcript must be paginated consecutively through all volumes. A heading — a brief description listing, for example, the last name of the witness

and the type of examination — must appear on each page. The pages of each volume of the reporter's transcript must be securely fastened at the left side. *See* VI *Guide to Judiciary Policies and Procedures-Court Reporters' Manual*, ch. XVIII (10/91).

(D) Sealed materials.

(1) When materials sealed by district court order are sent as part of the record, the district clerk must:

(a) separate the sealed materials from other portions of the record;

(b) enclose them in an envelope clearly marked “Sealed”; and

(c) affix a copy of the sealing order to the outside of the envelope.

(2) A party who needs to view a sealed document must file a motion giving the reasons why access is required.

(E) Presentence investigation reports. Presentence reports are confidential. If a presentence report needs to be sent as part of the record on appeal, the district clerk must treat it like sealed material under (D), except that parties and their attorneys may examine presentence reports in the clerk's office.

Fed. R. App. P. Rule 12. Docketing the Appeal; Filing a Representation Statement; Filing the Record

(a) Docketing the Appeal. Upon receiving the copy of the notice of appeal and the docket entries from the district clerk under Rule 3(d), the circuit clerk must docket the appeal under the title of the district-court action and must identify the appellant, adding the appellant's name if necessary.

(b) Filing a Representation Statement. Unless the court of appeals designates another time, the attorney who filed the notice of appeal must, within 10 days after filing the notice, file a statement with the circuit clerk naming the parties that the attorney represents on appeal.

(c) Filing the Record, Partial Record, or Certificate. Upon receiving the record, partial record, or district clerk's certificate as provided in Rule 11, the circuit clerk must file it and immediately notify all parties of the filing date.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

No local rule.

TITLE III. REVIEW OF A DECISION OF THE UNITED STATES TAX COURT

Fed. R. App. P. Rule 13. Review of a Decision of the Tax Court

(a) How Obtained; Time for Filing Notice of Appeal.

(1) Review of a decision of the United States Tax Court is commenced by filing a notice of appeal with the Tax Court clerk within 90 days after the entry of the Tax Court's decision. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d). If one party files a timely notice of appeal, any other party may file a notice of appeal within 120 days after the Tax Court's decision is entered.

(2) If, under Tax Court rules, a party makes a timely motion to vacate or revise the Tax Court's decision, the time to file a notice of appeal runs from the entry of the order disposing of the motion or from the entry of a new decision, whichever is later.

(b) Notice of Appeal; How Filed. The notice of appeal may be filed either at the Tax Court clerk's office in the District of Columbia or by mail addressed to the clerk. If sent by mail the notice is considered filed on the postmark date, subject to § 7502 of the Internal Revenue Code, as amended, and the applicable regulations.

(c) Contents of the Notice of Appeal; Service; Effect of Filing and Service. Rule 3 prescribes the contents of a notice of appeal, the manner of service, and the effect of its filing and service. Form 2 in the Appendix of Forms is a suggested form of a notice of appeal.

(d) The Record on Appeal; Forwarding; Filing.

(1) An appeal from the Tax Court is governed by the parts of Rules 10, 11, and 12 regarding the record on appeal from a district court, the time and manner of forwarding and filing, and the docketing in the court of appeals. References in those rules and in Rule 3 to the district court and district clerk are to be read as referring to the Tax Court and its clerk.

(2) If an appeal from a Tax Court decision is taken to more than one court of appeals, the original record must be sent to the court named in the first notice of

appeal filed. In an appeal to any other court of appeals, the appellant must apply to that other court to make provision for the record.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

No local rule.

Fed. R. App. P. Rule 14. Applicability of Other Rules to the Review of a Tax Court Decision

All provisions of these rules, except Rules 4-9, 15-20, and 22-23, apply to the review of a Tax Court decision.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 14

14.1 **Tenth Circuit rules apply.** These rules — except Rules 8, 9, 10, 11.1, 11.2, 15, 17, 20, 22, and 30 — apply to review of a decision of the Tax Court. As used in any applicable Tenth Circuit rule, the term "district court" includes the Tax Court, the term "district judge" includes a judge of the Tax Court, and the term "district clerk" includes the Tax Court clerk.

TITLE IV. REVIEW OR ENFORCEMENT OF AN ORDER OF AN ADMINISTRATIVE AGENCY, BOARD, COMMISSION, OR OFFICER

Fed. R. App. P. Rule 15. Review or Enforcement of an Agency Order – How Obtained; Intervention

(a) Petition for Review; Joint Petition.

(1) Review of an agency order is commenced by filing, within the time prescribed by law, a petition for review with the clerk of a court of appeals authorized to review the agency order. If their interests make joinder practicable, two or more persons may join in a petition to the same court to review the same order.

(2) The petition must:

(A) name each party seeking review either in the caption or the body of the petition – using such terms as "et al.," "petitioners," or "respondents" does not effectively name the parties;

(B) name the agency as a respondent (even though not named in the petition, the United States is a respondent if required by statute); and

(C) specify the order or part thereof to be reviewed.

(3) Form 3 in the Appendix of Forms is a suggested form of a petition for review.

(4) In this rule "agency" includes an agency, board, commission, or officer; "petition for review" includes a petition to enjoin, suspend, modify, or otherwise review, or a notice of appeal, whichever form is indicated by the applicable statute.

(b) Application or Cross-Application to Enforce an Order; Answer; Default.

(1) An application to enforce an agency order must be filed with the clerk of a court of appeals authorized to enforce the order. If a petition is filed to review an agency order that the court may enforce, a party opposing the petition may

file a cross-application for enforcement.

(2) Within 20 days after the application for enforcement is filed, the respondent must serve on the applicant an answer to the application and file it with the clerk. If the respondent fails to answer in time, the court will enter judgment for the relief requested.

(3) The application must contain a concise statement of the proceedings in which the order was entered, the facts upon which venue is based, and the relief requested.

(c) Service of the Petition or Application. The circuit clerk must serve a copy of the petition for review, or an application or cross-application to enforce an agency order, on each respondent as prescribed by Rule 3(d), unless a different manner of service is prescribed by statute. At the time of filing, the petitioner must:

(1) serve, or have served, a copy on each party admitted to participate in the agency proceedings, except for the respondents;

(2) file with the clerk a list of those so served; and

(3) give the clerk enough copies of the petition or application to serve each respondent.

(d) Intervention. Unless a statute provides another method, a person who wants to intervene in a proceeding under this rule must file a motion for leave to intervene with the circuit clerk and serve a copy on all parties. The motion – or other notice of intervention authorized by statute – must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention.

(e) Payment of Fees. When filing any separate or joint petition for review in a court of appeals, the petitioner must pay the circuit clerk all required fees.

10th Cir. R. 15

15.1 **Docketing statement.** Within 14 days after filing a petition for review or an application for enforcement, the filing party must file ~~an original and 4 copies of~~ a docketing statement on a form provided by the court. Four hard copies must be filed unless it is submitted per the court's Order regarding *Electronic Submission of Documents and Conversion to an Electronic Case Management System*. *See* www.ca10.uscourts.gov to locate a copy of that Order. *See* Appendix A, 10th Cir. Form 1.

15.2 **Intervention.**

(A) **Notice of intervention by a party.** A party to an agency proceeding may intervene in a review of that proceeding by filing a notice of intervention in the court. The notice must state whether the party wishes to intervene as a petitioner in opposition to the agency order or as a respondent in support of the order.

(B) **Motion to intervene.**

(1) ***Content.*** In addition to the requirements of Fed. R. App. P. 15(d), a nonparty motion must state the reasons why the parties cannot adequately protect the interest asserted.

(2) ***Opposition.*** Opposition to a motion to intervene must be filed within 10 days after the motion is served.

Fed. R. App. P. Rule 15.1. Briefs and Oral Argument in a National Labor Relations Board Proceeding

In either an enforcement or a review proceeding, a party adverse to the National Labor Relations Board proceeds first on briefing and at oral argument, unless the court orders otherwise.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

No local rule.

Fed. R. App. P. Rule 16. The Record on Review or Enforcement

(a) Composition of the Record. The record on review or enforcement of an agency order consists of:

(1) the order involved;

(2) any findings or report on which it is based; and

(3) the pleadings, evidence, and other parts of the proceedings before the agency.

(b) Omissions From or Misstatements in the Record. The parties may at any time, by stipulation, supply any omission from the record or correct a misstatement, or the court may so direct. If necessary, the court may direct that a supplemental record be prepared and filed.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

No local rule.

Fed. R. App. P. Rule 17. Filing the Record

(a) Agency to File; Time for Filing; Notice of Filing. The agency must file the record with the circuit clerk within 40 days after being served with a petition for review, unless the statute authorizing review provides otherwise, or within 40 days after it files an application for enforcement unless the respondent fails to answer or the court orders otherwise. The court may shorten or extend the time to file the record. The clerk must notify all parties of the date when the record is filed.

(b) Filing – What Constitutes.

(1) The agency must file:

(A) the original or a certified copy of the entire record or parts designated by the parties; or

(B) a certified list adequately describing all documents, transcripts of testimony, exhibits, and other material constituting the record, or describing those parts designated by the parties.

(2) The parties may stipulate in writing that no record or certified list be filed. The date when the stipulation is filed with the circuit clerk is treated as the date when the record is filed.

(3) The agency must retain any portion of the record not filed with the clerk. All parts of the record retained by the agency are a part of the record on review for all purposes and, if the court or a party so requests, must be sent to the court regardless of any prior stipulation.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 17

17.1 **Time for filing.** If a certified list is filed instead of the record, the entire record, or the parts designated by the parties, must be filed within 21 days after the respondent's brief is served.

17.2 **Form.** The record must be assembled as required by Rule 11.3.

Fed. R. App. P. Rule 18. Stay Pending Review

(a) Motion for a Stay.

(1) Initial Motion Before the Agency. A petitioner must ordinarily move first before the agency for a stay pending review of its decision or order.

(2) Motion in the Court of Appeals. A motion for a stay may be made to the court of appeals or one of its judges.

(A) The motion must:

(i) show that moving first before the agency would be impracticable; or

(ii) state that, a motion having been made, the agency denied the motion or failed to afford the relief requested and state any reasons given by the agency for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) The motion must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

(b) Bond. The court may condition relief on the filing of a bond or other appropriate security.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 18

18.1 **Applications for stay.** Applications for stay must comply with Rule 8.

Fed. R. App. P. Rule 19. Settlement of a Judgment Enforcing an Agency Order in Part

When the court files an opinion directing entry of judgment enforcing the agency's order in part, the agency must within 14 days file with the clerk and serve on each other party a proposed judgment conforming to the opinion. A party who disagrees with the agency's proposed judgment must within 7 days file with the clerk and serve the agency with a proposed judgment that the party believes conforms to the opinion. The court will settle the judgment and direct entry without further hearing or argument.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

No local rule.

Fed. R. App. P. Rule 20. Applicability of Rules to the Review or Enforcement of an Agency Order

All provisions of these rules, except Rules 3-14 and 22-23, apply to the review or enforcement of an agency order. In these rules, "appellant" includes a petitioner or applicant, and "appellee" includes a respondent.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 20

20.1 **Tenth Circuit rules apply.** These rules — except Rules 3, 9, 10, 11.1, 11.2, 14, and 22 — apply to review or enforcement of agency orders. As used in any Tenth Circuit rule, the term "appellant" includes a petitioner and the term "appellee" includes a respondent in proceedings to review or enforce agency orders, and the term "district judge" includes an administrative law judge or hearing officer.

TITLE V. EXTRAORDINARY WRITS

Fed. R. App. P. Rule 21. Writs of Mandamus and Prohibition, and Other Extraordinary Writs

(a) Mandamus or Prohibition to a Court: Petition, Filing, Service, and Docketing.

(1) A party petitioning for a writ of mandamus or prohibition directed to a court must file a petition with the circuit clerk with proof of service on all parties to the proceeding in the trial court. The party must also provide a copy to the trial-court judge. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes.

(2)(A) The petition must be titled "In re [name of petitioner]."

(B) The petition must state:

(i) the relief sought;

(ii) the issues presented;

(iii) the facts necessary to understand the issue presented by the petition; and

(iv) the reasons why the writ should issue.

(C) The petition must include a copy of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.

(3) Upon receiving the prescribed docket fee, the clerk must docket the petition and submit it to the court.

(b) Denial; Order Directing Answer; Briefs; Precedence.

(1) The court may deny the petition without an answer. Otherwise, it must order the respondent, if any, to answer within a fixed time.

(2) The clerk must serve the order to respond on all persons directed to respond.

(3) Two or more respondents may answer jointly.

(4) The court of appeals may invite or order the trial-court judge to address the petition or may invite an amicus curiae to do so. The trial-court judge may request permission to address the petition but may not do so unless invited or ordered to do so by the court of appeals.

(5) If briefing or oral argument is required, the clerk must advise the parties, and when appropriate, the trial-court judge or amicus curiae.

(6) The proceeding must be given preference over ordinary civil cases.

(7) The circuit clerk must send a copy of the final disposition to the trial-court judge.

(c) Other Extraordinary Writs. An application for an extraordinary writ other than one provided for in Rule 21(a) must be made by filing a petition with the circuit clerk with proof of service on the respondents. Proceedings on the application must conform, so far as is practicable, to the procedures prescribed in Rule 21(a) and (b).

(d) Form of Papers; Number of Copies. All papers must conform to Rule 32(c)(2). Except by the court's permission, a paper must not exceed 30 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 21(a)(2)(C). An original and 3 copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

10th Cir. R. 21

21.1 **Fees.** The fee is due when the petition is filed. *See* 28 U.S.C. § 1913 note (Judicial Conference Schedule of Fees).

TITLE VI. HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

Fed. R. App. P. Rule 22. Habeas Corpus and Section 2255 Proceedings

(a) Application for the Original Writ. An application for a writ of habeas corpus must be made to the appropriate district court. If made to a circuit judge, the application must be transferred to the appropriate district court. If a district court denies an application made or transferred to it, renewal of the application before a circuit judge is not permitted. The applicant may, under 28 U.S.C. § 2253, appeal to the court of appeals from the district court's order denying the application.

(b) Certificate of Appealability.

(1) In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c). If an applicant files a notice of appeal, the district judge who rendered the judgment must either issue a certificate of appealability or state why a certificate should not issue. The district clerk must send the certificate or statement to the court of appeals with the notice of appeal and the file of the district-court proceedings. If the district judge has denied the certificate, the applicant may request a circuit judge to issue the certificate.

(2) A request addressed to the court of appeals may be considered by a circuit judge or judges, as the court prescribes. If no express request for a certificate is filed, the notice of appeal constitutes a request addressed to the judges of the court of appeals.

(3) A certificate of appealability is not required when a state or its representative or the United States or its representative appeals.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 22

22.1 Certificate of appealability.

(A) **Required form.** Although a notice of appeal constitutes a request for a certificate of appealability, the court may require the appellant to file a separate application on a form provided by the court. The form asks for information that can help the court decide whether a certificate of appealability should be issued.

(B) **Dismissal for failure to file or pay fees.** If the fees are not paid or the form is not timely filed, the appeal may be dismissed.

(C) **Proceedings in District Courts**. The district court must consider the propriety of issuing a certificate of appealability in the first instance. Failure of the district court to issue a certificate of appealability within thirty days of filing the notice of appeal shall be deemed a denial.

(D) **Briefing**. Respondent-appellees shall not file a brief until requested to do so by this court.

22.2 **Procedures in death penalty cases.**

(A) **Cases with a scheduled execution date.**

(1) ***Statement of execution date.*** When a habeas petitioner has a scheduled execution date, a separate statement of the date must be filed with the petition. The statement, which may be on a form provided by the district court, must:

(a) certify the existence of a death sentence and state the execution date; and

(b) list any previous related cases in federal court and any related cases pending in any other court.

(2) ***Immediate communication.*** The district clerk must immediately notify the circuit clerk of the statement's filing and send a copy of the statement and the petition, with supporting documents, to the circuit clerk. If the execution date is imminent, electronic filing is permitted. The district clerk is encouraged to obtain a digital copy of the documents and send them by electronic mail.

(B) Motion for stay.

(1) ***Initial motion in district court.*** A motion for a stay of execution must ordinarily be made in the district court first. *See* Fed. R. App. P. 8(a)(2)(A)(i).

(2) ***Lodged with court of appeals.*** In anticipation of jurisdiction, a motion for stay and supporting documents may be sent to the circuit clerk before a notice of appeal is filed.

(3) ***Preassigned panels.*** If panels for death penalty cases are preassigned, the clerk will disclose the names of the panel judges and, with their permission, motions may be filed directly with them.

(C) Certificate of appealability.

(1) ***Express request not required.*** The court does not require a separate request for a certificate of appealability. The notice of appeal constitutes a request addressed to the court of appeals. The issues should be addressed in the briefs.

(2) ***Request denied.*** If this court denies a certificate of appealability, it can take no further action.

(3) ***Temporary stay.*** If a certificate of appealability is granted, the court will grant a temporary stay of execution to prevent the appeal from becoming moot.

(D) Vacation or denial of stay. Before a stay of execution is vacated or denied, the court will rule on the merits of the appeal.

22.3 Other rules applicable. All other Tenth Circuit rules apply in death penalty cases unless they are inconsistent with this rule.

Fed. R. App. P. Rule 23. Custody or Release of a Prisoner in a Habeas Corpus Proceeding

(a) Transfer of Custody Pending Review. Pending review of a decision in a habeas corpus proceeding commenced before a court, justice, or judge of the United States for the release of a prisoner, the person having custody of the prisoner must not transfer custody to another unless a transfer is directed in accordance with this rule. When, upon application, a custodian shows the need for a transfer, the court, justice, or judge rendering the decision under review may authorize the transfer and substitute the successor custodian as a party.

(b) Detention or Release Pending Review of Decision Not to Release. While a decision not to release a prisoner is under review, the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court, may order that the prisoner be:

(1) detained in the custody from which release is sought;

(2) detained in other appropriate custody; or

(3) released on personal recognizance, with or without surety.

(c) Release Pending Review of Decision Ordering Release. While a decision ordering the release of a prisoner is under review, the prisoner must – unless the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court orders otherwise – be released on personal recognizance, with or without surety.

(d) Modification of the Initial Order on Custody. An initial order governing the prisoner's custody or release, including any recognizance or surety, continues in effect pending review unless for special reasons shown to the court of appeals or the Supreme Court, or to a judge or justice of either court, the order is modified or an independent order regarding custody, release, or surety is issued.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

No local rule.

Fed. R. App. P. Rule 24. Proceeding in Forma Pauperis

(a) Leave to Proceed in Forma Pauperis.

(1) Motion in the District Court. Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

(A) shows in the detail prescribed by Form 4 of the Appendix of Forms, the party's inability to pay or to give security for fees and costs;

(B) claims an entitlement to redress; and

(C) states the issues that the party intends to present on appeal.

(2) Action on the Motion. If the district court grants the motion, the party may proceed on appeal without prepaying or giving security for fees and costs, unless a statute provides otherwise. If the district court denies the motion, it must state its reasons in writing.

(3) Prior Approval. A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court – before or after the notice of appeal is filed – certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) a statute provides otherwise.

(4) Notice of District Court's Denial. The district clerk must immediately notify the parties and the court of appeals when the district court does any of the following:

(A) denies a motion to proceed on appeal in forma pauperis;

(B) certifies that the appeal is not taken in good faith; or

(C) finds that the party is not otherwise entitled to proceed in forma pauperis.

(5) Motion in the Court of Appeals. A party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice prescribed in Rule 24(a)(4). The motion must include a copy of the affidavit filed in the district court and the district court's statement of reasons for its action. If no affidavit was filed in the district court, the party must include the affidavit prescribed by Rule 24(a)(1).

(b) Leave to Proceed in Forma Pauperis on Appeal or Review of an Administrative-Agency Proceeding. When an appeal or review of a proceeding before an administrative agency, board, commission, or officer (including for the purpose of this rule the United States Tax Court) proceeds directly in a court of appeals, a party may file in the court of appeals a motion for leave to proceed on appeal in forma pauperis with an affidavit prescribed by Rule 24(a)(1).

(c) Leave to Use Original Record. A party allowed to proceed on appeal in forma pauperis may request that the appeal be heard on the original record without reproducing any part.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

10th Cir. R. 24.1

24.1 Prison Litigation Reform Act.

All prisoners bringing civil actions or appeals shall pay the full amount of the filing fee. 28 U.S.C. § 1915(b)(1). Consequently, if a prisoner tenders no filing fee, or less than the full fee, when a notice of appeal is filed, the district court shall obtain sufficient information to determine the prisoner's eligibility for, and make the assessment of, a partial filing fee under the Act. If the prisoner has sufficient funds, the entire filing fee shall be assessed immediately. The partial fee determination must take place regardless of whether the prisoner's status was examined at the time the complaint or other pleading was submitted to the district court. The appeal should be processed and submitted to this court in the normal course, as required by Federal Rule of Appellate Procedure 3(d), without waiting for the determination of the prisoner's eligibility for paying less than the full filing fee. When the district court makes its determination, it shall enter an order and send a copy to this court. If the in forma pauperis application reveals that the prisoner has no assets and no means to pay an initial partial fee, 28 U.S.C. § 1915(b)(4), the district court's determination order must reflect that finding.

24.2 Duty of Prisoner Appellant.

The appellant shall authorize the custodian to deduct payments from the institutional account, and the custodian will pay the assessment. Notice shall be given to this court if the prisoner does not provide the information required under the Act or does not authorize payment from his or her institutional account. Filing fee payments shall be made to the clerk of the district court pursuant to Fed. R. App. P. 3(e).

TITLE VII. GENERAL PROVISIONS

Fed. R. App. P. Rule 25. Filing and Service

(a) Filing.

(1) Filing with the Clerk. A paper required or permitted to be filed in a court of appeals must be filed with the clerk.

(2) Filing: Method and Timeliness.

(A) In General. Filing may be accomplished by mail addressed to the clerk, but filing is not timely unless the clerk receives the papers within the time fixed for filing.

(B) A Brief or Appendix. A brief or appendix is timely filed, however, if on or before the last day for filing, it is:

(i) mailed to the clerk by First-Class Mail, or other class of mail that is at least as expeditious, postage prepaid; or

(ii) dispatched to a third-party commercial carrier for delivery to the clerk within 3 calendar days.

(C) Inmate Filing. A paper filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(D) Electronic Filing. A court of appeals may by local rule permit or require papers to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A local rule may require filing by electronic means only if reasonable exceptions are allowed. A paper filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules.

(3) Filing a Motion with a Judge. If a motion requests relief that may be granted by a single judge, the judge may permit the motion to be filed with the judge; the judge must note the filing date on the motion and give it to the clerk.

(4) Clerk's Refusal of Documents. The clerk must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice.

(5) Privacy Protection. An appeal in a case whose privacy protection was governed by Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, or Federal Rule of Criminal Procedure 49.1 is governed by the same rule on appeal. In all other proceedings, privacy protection is governed by Federal Rule of Civil Procedure 5.2, except that Federal Rule of Criminal Procedure 49.1 governs when an extraordinary writ is sought in a criminal case.

(b) Service of All Papers Required. Unless a rule requires service by the clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel must be made on the party's counsel.

(c) Manner of Service.

(1) Service may be any of the following:

(A) personal, including delivery to a responsible person at the office of counsel;

(B) by mail;

(C) by third-party commercial carrier for delivery within 3 calendar days; or

(D) by electronic means, if the party being served consents in writing.

(2) If authorized by local rule, a party may use the court's transmission equipment to make electronic service under Rule 25(c)(1)(D).

(3) When reasonable considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the court.

(4) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on transmission, unless the party making service is notified that the paper was not received by the party served.

(d) Proof of Service.

(1) A paper presented for filing must contain either of the following:

(A) an acknowledgment of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(B), the proof of service must also state the date and manner by which the document was mailed or dispatched to the clerk.

(3) Proof of service may appear on or be affixed to the papers filed.

(e) Number of Copies. When these rules require the filing or furnishing of a number of copies, a court may require a different number by local rule or by order in a particular case.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 30, 2007, eff. Dec. 1, 2007.)

10th Cir. R. 25

25.1 **File stamped copies of papers.** File stamped copies of papers filed with the court will be sent to the filing party only if the party provides necessary copies and a self-addressed envelope bearing sufficient postage.

25.2 **Additional copies.** The court may order parties to provide extra copies of any papers filed in a particular case.

25.3 **Fax filing.** Papers may not be filed by fax without prior authorization by the circuit clerk. In a death penalty case with a scheduled execution date, prior authorization may be assumed.

25.4 **Papers subject to being stricken.** If any papers filed with the circuit clerk do not comply with the Federal Rules of Appellate Procedure and these rules, they may be stricken.

25.5 **Electronic Filing**. As authorized by Fed. R. App. P. 25(a)(2)(D), the court adopts an Electronic Case Filing system. Cases may be designated for inclusion in the system by case type or by the particular case or cases. All papers filed in cases included in the system must be filed electronically in compliance with procedures adopted by the court and maintained by the clerk. Consistent with Rule 25(a)(2)(D), the local procedures will include reasonable exceptions for all requirements related to electronic filing. Copies of the court's procedures and any General Orders related to electronic filing may be obtained by contacting the office of the clerk or by visiting the court's website at www.ca10.uscourts.gov

Fed. R. App. P. Rule 26. Computing and Extending Time

(a) Computing Time. The following rules apply in computing any period of time specified in these rules or in any local rule, court order, or applicable statute:

(1) Exclude the day of the act, event, or default that begins the period.

(2) Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days, unless stated in calendar days.

(3) Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or – if the act to be done is filing a paper in court – a day on which the weather or other conditions make the clerk's office inaccessible.

(4) As used in this rule, "legal holiday" means New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other day declared a holiday by the President, Congress, or the state in which is located either the district court that rendered the challenged judgment or order, or the circuit clerk's principal office.

(b) Extending Time. For good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time to file:

(1) a notice of appeal (except as authorized in Rule 4) or a petition for permission to appeal; or

(2) a notice of appeal from or a petition to enjoin, set aside, suspend, modify, enforce, or otherwise review an order of an administrative agency, board, commission, or officer of the United States, unless specifically authorized by law.

(c) Additional Time after Service. When a party is required or permitted to act within a prescribed period after a paper is served on that party, 3 calendar days are added to the prescribed period unless the paper is delivered on the date of service stated in the proof of service. For purposes of this Rule 26(c), a paper that is served electronically is not treated as delivered on the date of

service stated in the proof of service.

(As amended Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005.)

No local rule.

Fed. R. App. P. Rule 26.1. Corporate Disclosure Statement

(a) Who Must File. Any nongovernmental corporate party to a proceeding in a court of appeals must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.

(b) Time for Filing; Supplemental Filing. A party must file the Rule 26.1(a) statement with the principal brief or upon filing a motion, response, petition, or answer in the court of appeals, whichever occurs first, unless a local rule requires earlier filing. Even if the statement has already been filed, the party's principal brief must include the statement before the table of contents. A party must supplement its statement whenever the information that must be disclosed under Rule 26.1(a) changes.

(c) Number of Copies. If the Rule 26.1(a) statement is filed before the principal brief, or if a supplemental statement is filed, the party must file an original and 3 copies unless the court requires a different number by local rule or by order in a particular case.

(As amended Apr. 29, 2002, eff. Dec. 1, 2002.)

No local rule.

Fed. R. App. P. Rule 27. Motions

(a) In General.

(1) Application for Relief. An application for an order or other relief is made by motion unless these rules prescribe another form. A motion must be in writing unless the court permits otherwise.

(2) Contents of a Motion.

(A) Grounds and Relief Sought. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(B) Accompanying Documents.

(i) Any affidavit or other paper necessary to support a motion must be served and filed with the motion.

(ii) An affidavit must contain only factual information, not legal argument.

(iii) A motion seeking substantive relief must include a copy of the trial court's opinion or agency's decision as a separate exhibit.

(C) Documents Barred or not Required.

(i) A separate brief supporting or responding to a motion must not be filed.

(ii) A notice of motion is not required.

(iii) A proposed order is not required.

(3) Response.

(A) Time to File. Any party may file a response to a motion; Rule 27(a)(2) governs its contents. The response must be filed within 8 days after service of the motion unless the court shortens or extends the time. A motion authorized by Rules 8, 9, 18, or 41 may be granted before the 8-day period runs

only if the court gives reasonable notice to the parties that it intends to act sooner.

(B) Request for Affirmative Relief. A response may include a motion for affirmative relief. The time to respond to the new motion, and to reply to that response, are governed by Rule 27(a)(3)(A) and (a)(4). The title of the response must alert the court to the request for relief.

(4) Reply to Response. Any reply to a response must be filed within 5 days after service of the response. A reply must not present matters that do not relate to the response.

(b) Disposition of a Motion for a Procedural Order. The court may act on a motion for a procedural order – including a motion under Rule 26(b) – at any time without awaiting a response, and may, by rule or by order in a particular case, authorize its clerk to act on specified types of procedural motions. A party adversely affected by the court's, or the clerk's, action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

(c) Power of a Single Judge to Entertain a Motion. A circuit judge may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding. A court of appeals may provide by rule or by order in a particular case that only the court may act on any motion or class of motions. The court may review the action of a single judge.

(d) Form of Papers; Page Limits; and Number of Copies.

(1) Format.

(A) Reproduction. A motion, response, or reply may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) Cover. A cover is not required but there must be a caption that includes the case number, the name of the court, the title of the case, and a brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed. If a cover is used, it must be white.

(C) Binding. The document must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.

(D) Paper Size, Line Spacing, and Margins. The document must be on ~~8 1/2~~8 ½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(E) Typeface and type styles. The document must comply with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6).

(2) Page Limits. A motion or a response to a motion must not exceed 20 pages, exclusive of the corporate disclosure statement and accompanying documents authorized by Rule 27(a)(2)(B), unless the court permits or directs otherwise. A reply to a response must not exceed 10 pages.

(3) Number of Copies. An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

(e) Oral Argument. A motion will be decided without oral argument unless the court orders otherwise.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005.)

10th Cir. R. 27

27.1 Certification of questions of state law.

(A) Certification; abatement. When state law permits, this court may:

(1) certify a question arising under state law to that state's highest court according to that court's rules; and

(2) stay the case in this court to await the state court's decision of the certified question.

(B) Motion. The court may certify on its own or on a party's motion.

(C) Time to file. A motion to certify should be filed at the same time as, but separately from, the moving party's brief on the merits.

(D) Response; time to file. A response may be filed at the same time as the answer or reply brief or within 10 days after the motion is served.

(E) When considered. A motion to certify is ordinarily referred to the panel of judges assigned to decide the appeal on the merits and is considered at the same time as the arguments on the merits.

27.2 Summary disposition on motion by a party or the court.

(A) Motions to dismiss or affirm.

(1) ***Types.*** A party may file only the following dispositive motions:

(a) a motion to dismiss the entire case for lack of appellate jurisdiction or for any other reason a dismissal is permitted by statute, the Federal Rules of Appellate Procedure or these rules;

(b) a motion for summary disposition because of a supervening change of law or mootness;

(c) a motion to remand for additional trial court or administrative proceedings; or

(d) a motion by the government to enforce an appeal waiver ~~(attaching copies of the plea agreement and the transcripts of the plea hearing and sentencing hearing).~~

(2) ***Contents.***

(a) The motion must discuss the grounds for the motion.

(b) A motion under (A)(1)(d) must include copies of the plea agreement and copies of transcripts for both the plea hearing and the sentencing hearing.

(3) ***Time to file.*** ~~If possible a~~

(a) A motion under ~~this rule must~~(A)(1)(a) through (c) should be filed within 15 days after the notice of appeal is filed~~. A motion filed out of time will be allowed only upon a showing of good cause. In addition, a timely filed motion may later be supplemented for good cause.~~ , unless good cause is shown.

(b) A motion under (A)(1)(d) must be filed within 20 days after:

(i) the district court's notice, pursuant to 10th Cir. R. 11.1, that the record is complete, or;

(ii) the district court's notice that it is transmitting the record pursuant to 10th Cir. R. 11.2.

Failure to file a timely motion to enforce a plea agreement does not ~~foreclose~~preclude a party from raising the issue in a merits brief.

(4) ***Time to respond.*** If a party chooses to respond to a motion, the response must be filed within 10 days after the motion is served.

(5) ***Number of copies.*** An original and 7 copies of the motion or response are required unless the pleading is submitted per the court's Order regarding *Electronic Submission of Documents and Conversion to an Electronic Case Management System*. *See* www.ca10.uscourts.gov

(B) **Action by the court.** After giving notice to the parties, the court may summarily dispose of an appeal or a petition for review or enforcement.

(1) ***Memorandum briefs.*** The court may require parties to file memorandum briefs addressing specific dispositive issues.

(2) ***Copies.*** An original and 7 copies of a memorandum brief must be filed. Pro se litigants may file a memorandum brief on a form provided by the court.

(3) ***Contents.*** A memorandum brief need not contain an index or a table of cases, but it must include a list of prior and related appeals.

(4) ***Submission.*** A case with memorandum briefs will be considered without oral argument, unless a panel member decides that oral argument is needed. *See* Rule 34.1(G).

(C) **Briefing stopped**. The filing of a motion under (A) or notice of action by the court under (B) suspends the briefing schedule unless the court orders otherwise.

27.3 **Clerk authorized to act on certain motions; required recitation.**

(A) **Motions.** Subject to review by the court, the clerk is authorized to act for the court on any of the following motions:

(1) to extend time to file a pleading or perform an act required by Fed. R. App. P. 10, 11, 12, 13(d), 17, 24, 27, 29, 30, 31, 39, or 40, or by Rule 3, 10, 11, 14, 15, 17, 20, 24, 27, 30, 31, 40, or 46;

(2) to correct a brief or pleading;

(3) to supplement or correct records or to incorporate records from previous appeals;

(4) to consolidate appeals;

(5) to substitute parties;

(6) to appear as amicus curiae;

(7) to expedite or continue cases;

(8) to withdraw or substitute counsel in a civil case or, after compliance with Rule 46.4, in a criminal case;

(9) by appellant to dismiss an appeal (in criminal and postconviction cases, *see* Rule 46.3(B)), or a stipulation for dismissal, with or without an agreement on payment of costs (if an appeal is dismissed, the clerk may issue a certified copy of the dismissal order as the mandate);

(10) for extension of time to file a petition for rehearing, limited to one extension of 15 days or less;

(11) a motion under Rule 30.2 or 30.3; or

(12) any other motion the court may authorize.

(B) **Opposed motions.** If any motion listed in (A) is opposed, the clerk will submit the matter to the court.

(C) **Disclosure of opponent's position.** Every motion filed under Fed. R. App. P. 27 and this rule must contain a statement of the opposing party's position on the relief requested or why the moving party was unable to learn the opposing party's position.

27.4 **Motions to extend time.**

(A) **Disfavored.** Extensions of time to file briefs are disfavored.

(B) **Content.** A motion to extend time must:

(1) state the brief's due date;

(2) contain a statement of the opposing party's position on the relief requested or why the moving party was unable to learn the opposing party's position; and

(3) list any such prior motion filed and the court's action on it.

(C) **Requirements.** The motion must establish that it will not be possible to file the brief on time, even if the party exercises due diligence and gives priority to preparing the brief.

(1) All factual statements must be set forth with specificity.

(2) Generalities — such as assertions that the purpose of the motion is not for delay and that counsel is too busy — are not sufficient.

(3) If the reason for the extension is that the transcript is not available, the motion must show that the transcript was timely ordered and paid for, or must explain why not.

(D) **Reasons.** Reasons that may merit consideration are that:

(1) other litigation presents a scheduling conflict, in which case the motion must:

(a) identify the litigation by caption, number, and court;

(b) describe the action taken in the other litigation on a request for continuance or deferment;

(c) state reasons why the other litigation should receive priority over the case in which the motion is filed;

(d) state reasons why other associated counsel cannot prepare the brief for timely filing or relieve movant's counsel of the other litigation; and

(e) recite any other relevant circumstances;

(2) the case is so complex that an adequate brief cannot reasonably be prepared by the due date, in which case the motion must state facts demonstrating the complexity; and

(3) counsel will suffer extreme hardship, in which case the motion must state the nature of the hardship.

(E) **Criminal cases.** A motion to extend time to file a brief in a criminal case must also state the custody status of the defendant.

(F) **Time to file.** A motion to extend time to file a brief must be filed at least 5 days before the brief's due date, unless the reasons for the request did not exist or were unknown earlier.

27.5 **Orders.**

(A) **Panel judge.** When a case has been assigned, a designated panel judge may issue any interlocutory order and act on any motion filed under Fed. R. App. P. 8, 9(b), 22(a), or 22(b).

(B) **Procedural orders.** Orders are entered when the clerk dockets them. The docket entry will:

(1) describe briefly and succinctly the nature of the order; and

(2) either be entered by the clerk or state the name of the judge or judges directing its entry.

Fed. R. App. P. Rule 28. Briefs

(a) Appellant's Brief. The appellant's brief must contain, under appropriate headings and in the order indicated:

(1) a corporate disclosure statement if required by Rule 26.1;

(2) a table of contents, with page references;

(3) a table of authorities – cases (alphabetically arranged), statutes, and other authorities – with references to the pages of the brief where they are cited;

(4) a jurisdictional statement, including:

(A) the basis for the district court's or agency's subject-matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(B) the basis for the court of appeals' jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(C) the filing dates establishing the timeliness of the appeal or petition for review; and

(D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the court of appeals' jurisdiction on some other basis;

(5) a statement of the issues presented for review;

(6) a statement of the case briefly indicating the nature of the case, the course of proceedings, and the disposition below;

(7) a statement of facts relevant to the issues submitted for review with appropriate references to the record (Rule 28(e));

(8) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

(9) the argument, which must contain:

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

(10) a short conclusion stating the precise relief sought; and

(11) the certificate of compliance, if required by Rule 32(a)(7).

(b) Appellee's Brief. The appellee's brief must conform to the requirements of Rule 28(a)(1)-(9) and (11), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

(1) the jurisdictional statement;

(2) the statement of the issues;

(3) the statement of the case;

(4) the statement of the facts; and

(5) the statement of the standard of review.

(c) Reply Brief. The appellant may file a brief in reply to the appellee's brief. Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities – cases (alphabetically arranged), statutes, and other authorities – with references to the pages of the reply brief where they are cited.

(d) References to Parties. In briefs and at oral argument, counsel should minimize use of the terms "appellant" and "appellee." To make briefs clear, counsel should use the parties' actual names or the designations used in the lower court or agency proceeding, or such descriptive terms as "the employee," "the injured person," "the taxpayer," "the ship," "the stevedore."

(e) References to the Record. References to the parts of the record contained in the appendix filed with the appellant's brief must be to the pages of the appendix. If the appendix is prepared after the briefs are filed, a party referring to the record must follow one of the methods detailed in Rule 30(c). If the original record is used under Rule 30(f) and is not consecutively paginated, or if the brief refers to an unreproduced part of the record, any reference must be to the page of the original document. For example:

- Answer p. 7;
- Motion for Judgment p. 2;
- Transcript p. 231.

Only clear abbreviations may be used. A party referring to evidence whose admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(f) Reproduction of Statutes, Rules, Regulations, etc. If the court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the brief or in an addendum at the end, or may be supplied to the court in pamphlet form.

(g) [Reserved]

(h) [Reserved]

(i) Briefs in a Case Involving Multiple Appellants or Appellees. In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.

(j) Citation of Supplemental Authorities. If pertinent and significant

authorities come to a party's attention after the party's brief has been filed – or after oral argument but before decision – a party may promptly advise the circuit clerk by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.

Rule 28.1. Cross-Appeals

(a) Applicability. This rule applies to a case in which a cross-appeal is filed. Rules 28(a)-(c), 31(a)(1), 32(a)(2), and 32(a)(7)(A)-(B) do not apply to such a case, except as otherwise provided in this rule.

(b) Designation of Appellant. The party who files a notice of appeal first is the appellant for the purposes of this rule and Rules 30 and 34. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.

(c) Briefs. In a case involving a cross-appeal:

(1) Appellant's Principal Brief. The appellant must file a principal brief in the appeal. That brief must comply with Rule 28(a).

(2) Appellee's Principal and Response Brief. The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That appellee's brief must comply with Rule 28(a), except that the brief need not include a statement of the case or a statement of the facts unless the appellee is dissatisfied with the appellant's statement.

(3) Appellant's Response and Reply Brief. The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 28(a)(2)–(9) and (11), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal:

(A) the jurisdictional statement;

(B) the statement of the issues;

(C) the statement of the case;

(D) the statement of the facts; and

(E) the statement of the standard of review.

(4) Appellee's Reply Brief. The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 28(a)(2)–(3) and (11) and must be limited to the issues presented by the cross-appeal.

(5) No Further Briefs. Unless the court permits, no further briefs may be filed in a case involving a cross-appeal.

(d) Cover. Except for filings by unrepresented parties, the cover of the appellant's principal brief must be blue; the appellee's principal and response brief, red; the appellant's response and reply brief, yellow; the appellee's reply brief, gray; an intervenor's or amicus curiae's brief, green; and any supplemental brief, tan. The front cover of a brief must contain the information required by Rule 32(a)(2).

(e) Length.

(1) Page Limitation. Unless it complies with Rule 28.1(e)(2) and (3), the appellant's principal brief must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's reply brief, 15 pages.

(2) Type-Volume Limitation.

(A) The appellant's principal brief or the appellant's response and reply brief is acceptable if:

(i) it contains no more than 14,000 words; or

(ii) it uses a monospaced face and contains no more than 1,300 lines of text.

(B) The appellee's principal and response brief is acceptable if:

(i) it contains no more than 16,500 words; or

(ii) it uses a monospaced face and contains no more than 1,500 lines of text.

(C) The appellee's reply brief is acceptable if it contains no more than half of the type volume specified in Rule 28.1(e)(2)(A).

(3) Certificate of Compliance. A brief submitted under Rule 28.1(e)(2) must comply with Rule 32(a)(7)(C).

(f) Time to Serve and File a Brief. Briefs must be served and filed as follows:

(1) the appellant's principal brief, within 40 days after the record is filed;

(2) the appellee's principal and response brief, within 30 days after the appellant's principal brief is served;

(3) the appellant's response and reply brief, within 30 days after the appellee's principal and response brief is served; and

(4) the appellee's reply brief, within 14 days after the appellant's response and reply brief is served, but at least 3 days before argument unless the court, for good cause, allows a later filing.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec.1, 2005.)

10th Cir. R. 28

28.1 References to appendix or record.

(A) **Appendix.** References to the appendix should be by page number (e.g., Aplt. App. at 27, or Aplee. Supp. App. at 14).

(B) **Record.** In cases without an appendix, references to the record should be by document number from the district court's docket sheet and page number within the document (e.g., Doc. 4 at 6). References to the transcript should be by page number.

28.2 Additional requirements.

(A) **Appellant's brief.** In addition to all other requirements of the Federal Rules of Appellate Procedure and these rules, the appellant's brief must include the following (even though they are also included in the appendix):

(1) copies of all pertinent written findings, conclusions, opinions, or orders of a district judge, bankruptcy judge, or magistrate judge (if the district court adopts a magistrate's report and recommendation, that report must also be included);

(2) if any judicial pronouncement listed in (1) is oral, a copy of the transcript pages;

(3) in social security cases, copies of the decisions of the administrative law judge and the appeals council; and

(4) in immigration cases, a copy of the transcript from the Immigration Judge's oral ruling, plus copies of the written rulings of the Immigration Judge and the Board of Immigration Appeals.

(B) **Appellee's brief.** If the appellant's brief fails to include all the rulings required by (A), the appellee's brief must include them.

(C) All principal briefs.

(1) ***Statement of related cases.*** At the end of the table of cases, the first brief filed by each party must list all prior or related appeals, with appropriate citations, or a statement that there are no prior or related appeals.

(2) ***Record references.*** For each issue raised on appeal, all briefs must cite the precise reference in the record where the issue was raised and ruled on.

(3) ***Particular record references.*** Briefs must cite the precise reference in the record where a required objection was made and ruled on, if the appeal is based on:

(a) a failure to admit or exclude evidence;

(b) the giving of or refusal to give a particular jury instruction; or

(c) any other act or ruling for which a party must record an objection to preserve the right to appeal.

(4) ***Oral argument statement.*** The front cover of each party's first brief must state whether oral argument is requested. If argument is requested, a statement of the reasons why argument is necessary must follow the brief's conclusion.

(5) ***Name of court and judge.*** The front cover of each brief must contain the name of the court and the judge whose judgment is being appealed.

28.3 **Motions to exceed page limits disfavored.** Motions to exceed the page limits will be denied unless extraordinary and compelling circumstances can be shown. A motion filed within 10 days of the brief's due date must show why earlier filing was not possible.

28.4 **Incorporating by reference disapproved.** Incorporating by reference portions of lower court or agency briefs or pleadings is disapproved and does not satisfy the requirements of Fed. R. App. P. 28(a) and (b).

Fed. R. App. P. Rule 29. Brief of an Amicus Curiae

(a) When Permitted. The United States or its officer or agency, or a State, Territory, Commonwealth, or the District of Columbia may file an amicus-curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing.

(b) Motion for Leave to File. The motion must be accompanied by the proposed brief and state:

(1) the movant's interest; and

(2) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(c) Contents and Form. An amicus brief must comply with Rule 32. In addition to the requirements of Rule 32, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. If an amicus curiae is a corporation, the brief must include a disclosure statement like that required of parties by Rule 26.1. An amicus brief need not comply with Rule 28, but must include the following:

(1) a table of contents, with page references;

(2) a table of authorities – cases (alphabetically arranged), statutes and other authorities – with references to the pages of the brief where they are cited;

(3) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;

(4) an argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review; and

(5) a certificate of compliance, if required by Rule 32(a)(7).

(d) Length. Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that

extension does not affect the length of an amicus brief.

(e) Time for Filing. An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's or petitioner's principal brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.

(f) Reply Brief. Except by the court's permission, an amicus curiae may not file a reply brief.

(g) Oral Argument. An amicus curiae may participate in oral argument only with the court's permission.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 29

29.1 **Amicus briefs on rehearing**. The court will receive but not file proposed amicus briefs on rehearing. Filing will be considered shortly before the oral argument on rehearing en banc if granted, or before the grant or denial of panel rehearing.

Fed. R. App. P. Rule 30. Appendix to the Briefs

(a) Appellant's Responsibility.

(1) Contents of the Appendix. The appellant must prepare and file an appendix to the briefs containing:

(A) the relevant docket entries in the proceeding below;

(B) the relevant portions of the pleadings, charge, findings, or opinion;

(C) the judgment, order, or decision in question; and

(D) other parts of the record to which the parties wish to direct the court's attention.

(2) Excluded Material. Memoranda of law in the district court should not be included in the appendix unless they have independent relevance. Parts of the record may be relied on by the court or the parties even though not included in the appendix.

(3) Time to File; Number of Copies. Unless filing is deferred under Rule 30(c), the appellant must file 10 copies of the appendix with the brief and must serve one copy on counsel for each party separately represented. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(b) All Parties' Responsibilities.

(1) Determining the Contents of the Appendix. The parties are encouraged to agree on the contents of the appendix. In the absence of an agreement, the appellant must, within 10 days after the record is filed, serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix and a statement of the issues the appellant intends to present for review. The appellee may, within 10 days after receiving the designation, serve on the appellant a designation of additional parts to which it wishes to direct the court's attention. The appellant must include the designated parts in the

appendix. The parties must not engage in unnecessary designation of parts of the record, because the entire record is available to the court. This paragraph applies also to a cross-appellant and a cross-appellee.

(2) Costs of Appendix. Unless the parties agree otherwise, the appellant must pay the cost of the appendix. If the appellant considers parts of the record designated by the appellee to be unnecessary, the appellant may advise the appellee, who must then advance the cost of including those parts. The cost of the appendix is a taxable cost. But if any party causes unnecessary parts of the record to be included in the appendix, the court may impose the cost of those parts on that party. Each circuit must, by local rule, provide for sanctions against attorneys who unreasonably and vexatiously increase litigation costs by including unnecessary material in the appendix.

(c) Deferred Appendix.

(1) Deferral Until After Briefs Are Filed. The court may provide by rule for classes of cases or by order in a particular case that preparation of the appendix may be deferred until after the briefs have been filed and that the appendix may be filed 21 days after the appellee's brief is served. Even though the filing of the appendix may be deferred, Rule 30(b) applies; except that a party must designate the parts of the record it wants included in the appendix when it serves its brief, and need not include a statement of the issues presented.

(2) References to the Record.

(A) If the deferred appendix is used, the parties may cite in their briefs the pertinent pages of the record. When the appendix is prepared, the record pages cited in the briefs must be indicated by inserting record page numbers, in brackets, at places in the appendix where those pages of the record appear.

(B) A party who wants to refer directly to pages of the appendix may serve and file copies of the brief within the time required by Rule 31(a), containing appropriate references to pertinent pages of the record. In that event, within 14 days after the appendix is filed, the party must serve and file copies of the brief, containing references to the pages of the appendix in place of or in addition to the references to the pertinent pages of the record. Except for the correction of typographical errors, no other changes may be made to the brief.

(d) Format of the Appendix. The appendix must begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. When pages from the transcript of proceedings are placed in the appendix, the transcript page numbers must be shown in brackets immediately before the included pages. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) should be omitted.

(e) Reproduction of Exhibits. Exhibits designated for inclusion in the appendix may be reproduced in a separate volume, or volumes, suitably indexed. Four copies must be filed with the appendix, and one copy must be served on counsel for each separately represented party. If a transcript of a proceeding before an administrative agency, board, commission, or officer was used in a district-court action and has been designated for inclusion in the appendix, the transcript must be placed in the appendix as an exhibit.

(f) Appeal on the Original Record Without an Appendix. The court may, either by rule for all cases or classes of cases or by order in a particular case, dispense with the appendix and permit an appeal to proceed on the original record with any copies of the record, or relevant parts, that the court may order the parties to file.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 30

30.1 **Appellant's appendix.** In appeals from a district court, except pro se appeals and appeals in which an appellant is represented by appointed counsel, the record on appeal is retained in the district court. Instead of the Fed. R. App. P. 30(b) appendix, the appellant must file an appendix containing record excerpts. This rule does not apply to appeals from the Tax Court.

(A) **Content.**

(1) ***Appellant's duty.*** The appellant must file an appendix sufficient for considering and deciding the issues on appeal. The requirements of Rule 10.3 for the contents of a record on appeal

apply to appellant's appendix. *See* Rule 10.1(A) (addressing appropriate transcripts).

(2) ***Social security cases.*** In social security cases, the entire administrative record must be in the appendix. A motion to file a single copy and waive service of the administrative record may be appropriate.

(3) ***Court not obliged.*** The court need not remedy any failure of counsel to provide an adequate appendix. *See* Rule 10.3(B).

(B) **Multiple appellants.** When multiple appellants are allowed to file separate briefs under Rule 31.3(B), separate appendices may be filed. But counsel must avoid duplication of items included in a previously filed appendix; these items may be adopted by reference. A single agreed appendix is preferred.

(C) **Form.**

(1) ***File stamped.*** Copies of documents should show the district court's file or electronic stamp, but they need not be certified.

(2) ***Order.*** Documents should be arranged in chronological order according to the filing date; other papers such as exhibits and transcript excerpts should be at the end. A copy of the district court's docket entries should always be the first document in the appendix.

(3) ***Pagination; index.*** The appendix must be paginated consecutively and must include an index of documents, with the page numbers where they appear.

(4) ***Sealed documents.*** Copies of documents under seal in the district court, such as presentence reports, should be filed in a separate volume, under seal.

(D) **Copies for filing and service.** The appellant must file 2 separately bound copies of the appendix with the opening brief. One copy of the appendix must be served on every other party to

the appeal.

(E) **Order appealed must be contained in brief.** Filing an appendix does not relieve counsel of the requirements of Rule 28.2(A).

30.2 **Supplemental appendix.**

(A) **Appellee's appendix.**

(1) ***Filing.*** An appellee who believes that the appellant's appendix omits items that should be included may file a supplemental appendix with the answer brief.

(2) ***Appointed counsel.*** If all appellants are represented by retained counsel, appointed counsel for an appellee may file a supplemental appendix and apply for reimbursement when the voucher or the statement of hours and expenses is filed.

(B) **No other appendix.** No other appendix may be filed except by order of the court.

30.3 **Appendix exemptions.**

(A) **Particular documents.** A party may file a motion to exempt documents from the appendix if:

(1) the documents themselves cannot be readily copied;

(2) essential excerpts of the reporter's transcript are so voluminous that copying is excessively burdensome or costly; or

(3) making 2 copies of the administrative record would be too costly.

(B) **Waiver of requirement.** In pro bono cases, if production of an appendix is too costly for the appellant to bear, the appellant may file a motion to proceed on the record on appeal.

Fed. R. App. P. Rule 31. Serving and Filing Briefs

(a) Time to Serve and File a Brief.

(1) The appellant must serve and file a brief within 40 days after the record is filed. The appellee must serve and file a brief within 30 days after the appellant's brief is served. The appellant may serve and file a reply brief within 14 days after service of the appellee's brief but a reply brief must be filed at least 3 days before argument, unless the court, for good cause, allows a later filing.

(2) A court of appeals that routinely considers cases on the merits promptly after the briefs are filed may shorten the time to serve and file briefs, either by local rule or by order in a particular case.

(b) Number of Copies. Twenty-five copies of each brief must be filed with the clerk and 2 copies must be served on each unrepresented party and on counsel for each separately represented party. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on each unrepresented party and on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(c) Consequence of Failure to File. If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the court grants permission.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

10th Cir. R. 31

31.1 Opening brief for appellant/petitioner.

(A) Appeals from district court.

(1) ***Retained counsel.*** When the record remains in the district court and the appellant is required to file an appendix, the appellant's brief and appendix must be filed within 40 days after the date the district clerk (as required by Rule 11.1) notifies the parties and the circuit clerk that the record is complete for purposes of appeal.

(2) ***Appointed counsel; pro se.*** In all other cases, appellant's opening brief must be filed and served according to Fed. R. App. P. 31(a).

(B) Review and enforcement proceedings. In cases seeking review or enforcement of agency orders, petitioner's opening brief must be filed within 40 days after the date when the certified list is filed or the date when the record is filed, whichever occurs first.

31.2 Joint briefing in criminal appeals. Codefendants in criminal appeals may each file a brief or may join in a single brief. Joint briefs must bear the appellate case numbers and captions of all appeals. The United States is encouraged to file a single brief.

31.3 Joint briefing in civil appeals.

(A) Multiple parties. In civil cases involving more than one appellant or appellee, including consolidated cases, all parties on a side (including intervenors) must — to the extent practicable — file a single brief. Where, however, multiple response briefs are filed pursuant to 10th Cir. R. 31.3(B), the appellant may file only one reply except upon motion to the court seeking an exemption.

(B) Certificate of counsel. Any brief filed separately by one of multiple parties must contain a certificate plainly stating the reasons why the separate brief is necessary.

(C) Extension of time. On motion, the clerk may extend the time for

briefing to allow the parties time to coordinate a single brief.

(D) **Government entities exempt.** This rule does not apply to government entities.

31.4 **Extensions.** Extensions of time to file briefs are disfavored. *See* Rule 27.4.

31.5 **Number of copies.** A party (or an amicus) must file an original and 7 hard copies of all briefs ~~and~~. The same is true for supplemental authorities unless they are submitted per the court's Order regarding *Electronic Submission of Documents and Conversion to an Electronic Case Management System*. *See* www.ca10.uscourts.gov Counsel may be required to furnish additional copies if needed. In addition, a party (or amicus) must serve a single copy of all filings on each unrepresented party and all counsel for each separately represented party.

Fed. R. App. P. Rule 32. Form of Briefs, Appendices, and Other Papers

(a) Form of a Brief.

(1) Reproduction.

(A) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.

(C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy.

(2) Cover. Except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; any reply brief, gray and any supplemental brief, tan. The front cover of a brief must contain:

(A) the number of the case centered at the top;

(B) the name of the court;

(C) the title of the case (*See* Rule 12(a));

(D) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court, agency, or board below;

(E) the title of the brief, identifying the party or parties for whom the brief is filed; and

(F) the name, office address, and telephone number of counsel representing the party for whom the brief is filed.

(3) Binding. The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.

(4) Paper Size, Line Spacing, and Margins. The brief must be on 8 ~~1/2~~½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single- spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(5) Typeface. Either a proportionally spaced or a monospaced face may be used.

(A) A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger.

(B) A monospaced face may not contain more than 10 ~~1/2~~½ characters per inch.

(6) Type Styles. A brief must be set in a plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.

(7) Length.

(A) Page limitation. A principal brief may not exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 32(a)(7)(B) and (C).

(B) Type-volume limitation.

(i) A principal brief is acceptable if:

- it contains no more than 14,000 words; or
- it uses a monospaced face and contains no more than 1,300 lines of text.

(ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Rule 32(a)(7)(B)(i).

(iii) Headings, footnotes, and quotations count toward the word and line limitations. The corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing

statutes, rules or regulations, and any certificates of counsel do not count toward the limitation.

(C) Certificate of Compliance.

(i) A brief submitted under Rules 28.1(e)(2) or 32(a)(7)(B) must include a certificate by the attorney, or an unrepresented party, that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state either:

- the number of words in the brief; or

- the number of lines of monospaced type in the brief.

(ii) Form 6 in the Appendix of Forms is a suggested form of a certificate of compliance. Use of Form 6 must be regarded as sufficient to meet the requirements of Rules 28.1(e)(3) and 32(a)(7)(C)(i).

(b) Form of an Appendix. An appendix must comply with Rule 32(a)(1), (2), (3), and (4), with the following exceptions:

(1) The cover of a separately bound appendix must be white.

(2) An appendix may include a legible photocopy of any document found in the record or of a printed judicial or agency decision.

(3) When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 8 ~~1/2~~½ by 11 inches, and need not lie reasonably flat when opened.

(c) Form of Other Papers.

(1) Motion. The form of a motion is governed by Rule 27(d).

(2) Other Papers. Any other paper, including a petition for panel rehearing and a petition for hearing or rehearing en banc, and any response to such a petition, must be reproduced in the manner prescribed by Rule 32(a), with the following exceptions:

(A) A cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 32(a)(2). If a cover is used, it must be white.

(B) Rule 32(a)(7) does not apply.

(d) Signature. Every brief, motion, or other paper filed with the court must be signed by the party filing the paper or, if the party is represented, by one of the party's attorneys.

(e) Local Variation. Every court of appeals must accept documents that comply with the form requirements of this rule. By local rule or order in a particular case a court of appeals may accept documents that do not meet all of the form requirements of this rule.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005.)

10th Cir. R. 32

32(a) Text of briefs. The court prefers 14-point type as required by Fed. R. App. P. 32(a)(5)(A), but 13-point type is acceptable.

Fed. R. App. P. 32.1. Citing Judicial Dispositions

(a) Citation Permitted. A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been:

(i) designated as "unpublished," "not for publication," "non-precedential," "not precedent," or the like; and

(ii) issued on or after January 1, 2007.

(b) Copies Required. If a party cites a federal judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database, the party must file and serve a copy of that opinion, order, judgment, or disposition with the brief or other paper in which it is cited.

(Eff. Dec. 1, 2006.)

10th Cir. R. 32.1

32.1 Citing Judicial Dispositions

(A) **Precedential value.** The citation of unpublished decisions is permitted to the full extent of the authority found in Fed. R. App. P. 32.1. Unpublished decisions are not precedential, but may be cited for their persuasive value. They may also be cited under the doctrines of law of the case, claim preclusion, and issue preclusion. Citation to unpublished opinions must include an appropriate parenthetical notation. *E.g., United States v. Wilson*, No. 06-2047, 2006 WL 3072766 (10th Cir. Oct. 31, 2006)(unpublished); *United States v. Keeble,* No. 05-5190*,* 184 Fed. Appx. 756, 2006 U.S. App. LEXIS 14871, (10th Cir. June 15, 2006)(unpublished).

(B) **Reference.** If an unpublished decision cited in a brief or other pleading is not available in a publicly accessible electronic database, a copy must be attached to the document when it is filed and must be provided to all other counsel and pro se parties. Where possible, references to unpublished dispositions should include the appropriate electronic citation.

(C) **Retroactive effect.** Parties may cite unpublished decisions issued prior to January 1, 2007, in the same manner and under the same circumstances as are allowed by Fed. R. App. P. 32.1(a)(i) and part (A) of this local rule.

Fed. R. App. P. Rule 33. Appeal Conferences

The court may direct the attorneys – and, when appropriate, the parties – to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement. A judge or other person designated by the court may preside over the conference, which may be conducted in person or by telephone. Before a settlement conference, the attorneys must consult with their clients and obtain as much authority as feasible to settle the case. The court may, as a result of the conference, enter an order controlling the course of the proceedings or implementing any settlement agreement.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 33

33.1 Mediation conference.

(A) Circuit mediation office; purpose of mediation conference. The circuit mediation office may schedule and conduct mediation conferences in any matter pending before the court. The primary purpose of a conference is to explore settlement, but case management matters may also be addressed.

(B) Participation of counsel and parties. Counsel must participate in every scheduled mediation conference and in related discussions. Generally a party may participate but need not unless required by the circuit mediation office. Conferences are conducted by telephone unless the circuit mediation office directs otherwise.

(C) Preparation of counsel for mediation conference; settlement authority. Counsel must consult with their clients and obtain as much authority as feasible to settle the case and agree on case management matters in preparing for the initial conference. These obligations continue throughout the mediation process.

(D) Confidentiality. Statements made during the conference and in related discussions, and any records of those statements, are confidential and must not be disclosed by anyone (including the circuit mediation office, counsel, or the parties; and their agents or employees), to anyone not participating in the mediation process. Proceedings under this rule may not be recorded by counsel or the parties.

(E) Conference order; mediator authority. The circuit mediation office may cause a judgment or order to be entered controlling the course of the case or the mediation proceedings. The circuit mediation office and its mediators are delegates of this court. Any conference orders or other communications from the circuit mediation office must be treated the same as any other court directive.

(F) Extensions for ordering transcript or filing brief. The time allowed by Fed. R. App. P. 10(b)(1) for ordering a transcript and by Rule 31.1 for filing briefs is not automatically tolled pending a conference. If a conference has been scheduled, counsel may contact the circuit mediation office for an extension of time to order a transcript or to file a brief.

(G) Request for mediation conference by counsel. Counsel may request a mediation conference by contacting the circuit mediation office. The office will determine whether a conference will be held.

(H) Sanctions. The court may impose sanctions if counsel or a party violates this rule or an order entered under it.

33.2 Counsel conference.

(A) Counsel conference required. Unless a mediation conference under Rule 33.1 has been conducted, counsel must discuss settlement in all civil matters except those involving pro se litigants, relief from criminal convictions, and social security appeals.

(B) Counsel for appellant to initiate. In cases to which Rule 33.2(A) applies, counsel for the appellant or petitioner must initiate a conference with opposing counsel to fully explore settlement no later than 30 days after the filing of the last brief. The conference may be conducted by telephone.

(C) Report of counsel conference. No later than 10 days after the initiation of the conference, counsel for appellant or petitioner must mail a report to the circuit mediation office on a form provided by the clerk. Service of this report upon opposing counsel is not required.

(D) Confidentiality. Statements made during a conference, the Rule 33.2(C) report, and related discussions are covered by the confidentiality provision of Rule 33.1(D).

Fed. R. App. P. Rule 34. Oral Argument

(a) In General.

(1) Party's Statement. Any party may file, or a court may require by local rule, a statement explaining why oral argument should, or need not, be permitted.

(2) Standards. Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons:

(A) the appeal is frivolous;

(B) the dispositive issue or issues have been authoritatively decided; or

(C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

(b) Notice of Argument; Postponement. The clerk must advise all parties whether oral argument will be scheduled, and, if so, the date, time, and place for it, and the time allowed for each side. A motion to postpone the argument or to allow longer argument must be filed reasonably in advance of the hearing date.

(c) Order and Contents of Argument. The appellant opens and concludes the argument. Counsel must not read at length from briefs, records, or authorities.

(d) Cross-Appeals and Separate Appeals. If there is a cross-appeal, Rule 28.1(b) determines which party is the appellant and which is the appellee for purposes of oral argument. Unless the court directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.

(e) Nonappearance of a Party. If the appellee fails to appear for argument, the court must hear appellant's argument. If the appellant fails to appear for argument, the court may hear the appellee's argument. If neither party appears, the case will be decided on the briefs, unless the court orders otherwise.

(f) Submission on Briefs. The parties may agree to submit a case for decision on the briefs, but the court may direct that the case be argued.

(g) Use of Physical Exhibits at Argument; Removal. Counsel intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes. After the argument, counsel must remove the exhibits from the courtroom, unless the court directs otherwise. The clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 25, 2005, eff. Dec. 1, 2005.)

10th Cir. R. 34

34.1 Oral argument.

(A) Responsibilities of counsel.

(1) ***Presence of counsel.*** Counsel for each party must be present for oral argument unless excused by the court. The established argument time is allocated by counsel as they see fit.

(2) ***Motion to waive oral argument.*** After the principal briefs have been filed, a party may file a motion to waive oral argument and to submit a case on the briefs. If filed within 10 days of the scheduled argument date, the motion must show why an earlier filing was not possible.

(3) ***Postponement.*** Only in extraordinary circumstances will an argument be postponed. Except in an emergency, a motion to postpone must be made more than 10 days before the scheduled argument date.

(4) ***Recovery of expenses.*** A party prejudiced by the granting of a motion to waive or postpone oral argument filed within 10 days of the scheduled argument date may move for recovery of expenses.

(B) **Joint appeals.** Cases that have been consolidated for briefing purposes will be treated as one case for oral argument. The court does not favor divided arguments on behalf of a single party or multiple parties with the same interests.

(C) **Multiple counsel.** If more than one counsel argues on the same side, the time allowed is divided as they agree. If counsel do not agree, the court will allocate the time.

(D) **Preparation.** In preparing for oral argument, counsel should remember that the judges read the briefs before oral argument.

(E) **Recording.** Oral argument may be electronically recorded for the exclusive use of the court. No other recording is allowed. Counsel or parties may move for permission to arrange, at their own expense, for a qualified court reporter to be present and to report and transcribe oral argument. A copy of the transcript must be filed with the circuit clerk.

(F) **No oral argument on petitions or motions.** Oral argument on petitions or motions is not ordinarily permitted.

(G) **Submission on briefs.** Except in pro se appeals or when both parties have waived oral argument, the court will notify the parties when a panel decides that oral argument is not necessary.

Fed. R. App. P. Rule 35. En Banc Determination

(a) When Hearing or Rehearing En Banc May Be Ordered. A majority of the circuit judges who are in regular active service and who are not disqualified may order that an appeal or other proceeding be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless:

(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or

(2) the proceeding involves a question of exceptional importance.

(b) Petition for Hearing or Rehearing En Banc. A party may petition for a hearing or rehearing en banc.

(1) The petition must begin with a statement that either:

(A) the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or

(B) the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue.

(2) Except by the court's permission, a petition for an en banc hearing or rehearing must not exceed 15 pages, excluding material not counted under Rule 32.

(3) For purposes of the page limit in Rule 35(b)(2), if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a single document even if they are filed separately, unless separate filing is required by local rule.

(c) Time for Petition for Hearing or Rehearing En Banc. A petition that an appeal be heard initially en banc must be filed by the date when the appellee's brief is due. A petition for a rehearing en banc must be filed within the time prescribed by Rule 40 for filing a petition for rehearing.

(d) Number of Copies. The number of copies to be filed must be prescribed by local rule and may be altered by order in a particular case.

(e) Response. No response may be filed to a petition for an en banc consideration unless the court orders a response.

(f) Call for a Vote. A vote need not be taken to determine whether the case will be heard or reheard en banc unless a judge calls for a vote.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 25, 2005, eff. Dec. 1, 2005.)

10th Cir. R. 35

35.1 En banc consideration.

(A) **Extraordinary procedure.** A request for en banc consideration is disfavored. En banc review is an extraordinary procedure intended to focus the entire court on an issue of exceptional public importance or on a panel decision that conflicts with a decision of the United States Supreme Court or of this court.

(B) **Petition not required.** Filing a petition for rehearing or for rehearing en banc is not required before filing a petition for certiorari in the United States Supreme Court.

(C) **No reconsideration.** The court will not reconsider either the denial of an en banc petition or an en banc disposition.

35.2 Request in petition for rehearing.

(A) **Cover.** The request for en banc consideration must appear on the cover page and in the title of the document requesting rehearing.

(B) **Form of request.** A copy of the opinion or order and judgment that is the subject of a request for rehearing en banc must be

attached to every copy of the petition. *See* Rule 40.2.

35.3 **Untimely request.** Untimely en banc requests will be transmitted to the full court only upon express order of the hearing panel.

35.4 **Number of copies.** A party seeking en banc review must file an original and 18 copies of a petition for en banc consideration. A pro se party proceeding without prepayment of fees may file an original and 3 copies. These copies are required even when the petition is e-submitted.

35.5 **Who may vote; en banc panel.** A majority of the active judges who are not disqualified may order rehearing en banc. The en banc panel consists of this court's active judges who are not disqualified and any senior judge who was a member of the hearing panel, unless he or she elects not to sit.

35.6 **Effect of rehearing en banc.** The grant of rehearing en banc vacates the judgment, stays the mandate, and restores the case on the docket as a pending appeal. The panel decision is not vacated unless the court so orders.

35.7 **Matters not considered en banc.** The en banc court does not consider procedural and interim matters such as stay orders, injunctions pending appeal, appointment of counsel, leave to appeal in forma pauperis, and leave to appeal from a nonfinal order. En banc requests in these matters are referred to the judge or panel that entered the order, in the same manner as a petition for rehearing.

Fed. R. App. P. Rule 36. Entry of Judgment; Notice

(a) Entry. A judgment is entered when it is noted on the docket. The clerk must prepare, sign, and enter the judgment:

(1) after receiving the court's opinion-but if settlement of the judgment's form is required, after final settlement; or

(2) if a judgment is rendered without an opinion, as the court instructs.

(b) Notice. On the date when judgment is entered, the clerk must serve on all parties a copy of the opinion – or the judgment, if no opinion was written – and a notice of the date when the judgment was entered.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

10th Cir. R. 36

36.1 **Orders and judgments.** The court does not write opinions in every case. The court may dispose of an appeal or petition without written opinion. Disposition without opinion does not mean that the case is unimportant. It means that the case does not require application of new points of law that would make the decision a valuable precedent.

36.2 **Publication.** When the opinion of the district court, an administrative agency, or the Tax Court has been published, this court ordinarily designates its disposition for publication. If the disposition is by order and judgment, the court will publish only the result of the appeal.

Fed. R. App. P. Rule 37. Interest on Judgment

(a) When the Court Affirms. Unless the law provides otherwise, if a money judgment in a civil case is affirmed, whatever interest is allowed by law is payable from the date when the district court's judgment was entered.

(b) When the Court Reverses. If the court modifies or reverses a judgment with a direction that a money judgment be entered in the district court, the mandate must contain instructions about the allowance of interest.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

No local rule.

Fed. R. App. P. Rule 38. Frivolous Appeal – Damages and Costs

If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

No local rule.

Fed. R. App. P. Rule 39. Costs

(a) Against Whom Assessed. The following rules apply unless the law provides or the court orders otherwise:

(1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;

(2) if a judgment is affirmed, costs are taxed against the appellant;

(3) if a judgment is reversed, costs are taxed against the appellee;

(4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the court orders.

(b) Costs For and Against the United States. Costs for or against the United States, its agency, or officer will be assessed under Rule 39(a) only if authorized by law.

(c) Costs of Copies. Each court of appeals must, by local rule, fix the maximum rate for taxing the cost of producing necessary copies of a brief or appendix, or copies of records authorized by Rule 30(f). The rate must not exceed that generally charged for such work in the area where the clerk's office is located and should encourage economical methods of copying.

(d) Bill of Costs: Objections; Insertion in Mandate.

(1) A party who wants costs taxed must – within 14 days after entry of judgment – file with the circuit clerk, with proof of service, an itemized and verified bill of costs.

(2) Objections must be filed within 10 days after service of the bill of costs, unless the court extends the time.

(3) The clerk must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the district clerk must – upon the circuit clerk's request – add the statement of costs, or any amendment of it, to the mandate.

(e) Costs on Appeal Taxable in the District Court. The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs under this rule:

(1) the preparation and transmission of the record;

(2) the reporter's transcript, if needed to determine the appeal;

(3) premiums paid for a supersedeas bond or other bond to preserve rights pending appeal; and

(4) the fee for filing the notice of appeal.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 39

39.1 **Maximum rates.** Costs of making necessary copies of briefs, appendices, or other records are taxable at the actual cost, but no more than 50 cents per page.

Fed. R. App. P. Rule 40. Petition for Panel Rehearing

(a) Time to File; Contents; Answer; Action by the Court if Granted.

(1) Time. Unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within 14 days after entry of judgment. But in a civil case, if the United States or its officer or agency is a party, the time within which any party may seek rehearing is 45 days after entry of judgment, unless an order shortens or extends the time.

(2) Contents. The petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.

(3) Answer. Unless the court requests, no answer to a petition for panel rehearing is permitted. But ordinarily rehearing will not be granted in the absence of such a request.

(4) Action by the Court. If a petition for panel rehearing is granted, the court may do any of the following:

(A) make a final disposition of the case without reargument;

(B) restore the case to the calendar for reargument or resubmission; or

(C) issue any other appropriate order.

(b) Form of Petition; Length. The petition must comply in form with Rule 32. Copies must be served and filed as Rule 31 prescribes. Unless the court permits or a local rule provides otherwise, a petition for panel rehearing must not exceed 15 pages.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 40

40.1 Reasons for petition.

(A) Not routine. A petition for rehearing should not be filed routinely. Rehearing will be granted only if a significant issue has been overlooked or misconstrued by the court.

(B) Sanctions. If a petition for rehearing is found to be frivolous, vexatious, or filed for delay, the court may impose a money penalty of up to $500. Counsel may be required to personally pay the penalty to the opposing party. *See* 28 U.S.C. § 1927.

40.2 Form; copies. A party filing a petition for panel rehearing must file an original and 3 copies. If the petition is accompanied by a request for rehearing en banc, the petitioner must file an original and 18 copies. These copies are required even if the petition is e-submitted. In either case, a copy of the opinion or order and judgment sought to be reheard must be attached to the petition.

40.3 Successive petitions. The court will accept only one petition for rehearing from any party to an appeal. No motion to reconsider the court's ruling on a petition for rehearing may be filed.

Fed. R. App. P. Rule 41. Mandate: Contents; Issuance and Effective Date; Stay

(a) Contents. Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.

(b) When Issued. The court's mandate must issue 7 calendar days after the time to file a petition for rehearing expires, or 7 calendar days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time.

(c) Effective Date. The mandate is effective when issued.

(d) Staying the Mandate.

(1) On Petition for Rehearing or Motion. The timely filing of a petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, stays the mandate until disposition of the petition or motion, unless the court orders otherwise.

(2) Pending Petition for Certiorari.

(A) A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court. The motion must be served on all parties and must show that the certiorari petition would present a substantial question and that there is good cause for a stay.

(B) The stay must not exceed 90 days, unless the period is extended for good cause or unless the party who obtained the stay files a petition for the writ and so notifies the circuit clerk in writing within the period of the stay. In that case, the stay continues until the Supreme Court's final disposition.

(C) The court may require a bond or other security as a condition to granting or continuing a stay of the mandate.

(D) The court of appeals must issue the mandate immediately when a copy of a Supreme Court order denying the petition for writ of certiorari is filed.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

10th Cir. R. 41

41.1 Stay not routinely granted.

(A) **Criminal cases.** To minimize delay in the administration of justice, after the affirmance of a conviction the mandate will issue and bail will be revoked. A motion to stay the mandate will not be granted unless the court finds that it is not frivolous or filed merely for delay. The court — or a judge of the hearing panel — may revoke bail before the mandate is issued. *See* 18 U.S.C. § 3141(b).

(B) **Civil cases.** A motion to stay the mandate in a civil case will not be granted unless the court finds there is a substantial possibility that a petition for writ of certiorari would be granted.

Fed. R. App. P. Rule 42. Voluntary Dismissal

(a) Dismissal in the District Court. Before an appeal has been docketed by the circuit clerk, the district court may dismiss the appeal on the filing of a stipulation signed by all parties or on the appellant's motion with notice to all parties.

(b) Dismissal in the Court of Appeals. The circuit clerk may dismiss a docketed appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. But no mandate or other process may issue without a court order. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 42

42.1 **Dismissal for failure to prosecute.** When an appellant fails to comply with the Federal Rules of Appellate Procedure or these rules, the clerk will notify the appellant that the appeal may be dismissed for failure to prosecute unless the failure to comply is remedied within a designated time. If the appellant fails to comply within that time, the clerk will enter an order dismissing the appeal and issue a certified copy of the order as the mandate. The appellant may not remedy the failure to comply after the appeal is dismissed, unless the court orders otherwise.

42.2 **Reinstatement.** A motion to reinstate an appeal dismissed for failure to prosecute may not be filed unless the failure is remedied or the remedy for the failure accompanies the motion.

Fed. R. App. P. Rule 43. Substitution of Parties

(a) Death of a Party.

(1) After Notice of Appeal Is Filed. If a party dies after a notice of appeal has been filed or while a proceeding is pending in the court of appeals, the decedent's personal representative may be substituted as a party on motion filed with the circuit clerk by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 25. If the decedent has no representative, any party may suggest the death on the record, and the court of appeals may then direct appropriate proceedings.

(2) Before Notice of Appeal Is Filed – Potential Appellant. If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative – or, if there is no personal representative, the decedent's attorney of record – may file a notice of appeal within the time prescribed by these rules. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(3) Before Notice of Appeal Is Filed – Potential Appellee. If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court, but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(b) Substitution for a Reason Other Than Death. If a party needs to be substituted for any reason other than death, the procedure prescribed in Rule 43(a) applies.

(c) Public Officer: Identification; Substitution.

(1) Identification of Party. A public officer who is a party to an appeal or other proceeding in an official capacity may be described as a party by the public officer's official title rather than by name. But the court may require the public officer's name to be added.

(2) Automatic Substitution of Officeholder. When a public officer who is a party to an appeal or other proceeding in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate. The public officer's

successor is automatically substituted as a party. Proceedings following the substitution are to be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties may be disregarded. An order of substitution may be entered at any time, but failure to enter an order does not affect the substitution.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

No local rule.

Fed. R. App. P. Rule 44. Case Involving a Constitutional Question When the United States or the Relevant State Is Not a Party

(a) Constitutional Challenge to Federal Statute. If a party questions the constitutionality of an Act of Congress in a proceeding in which the United States or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the Attorney General.

(b) Constitutional Challenge to State Statute. If a party questions the constitutionality of a statute of a State in a proceeding in which that State or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the attorney general of the State.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

No local rule.

Fed. R. App. P. Rule 45. Clerk's Duties

(a) General Provisions.

(1) Qualifications. The circuit clerk must take the oath and post any bond required by law. Neither the clerk nor any deputy clerk may practice as an attorney or counselor in any court while in office.

(2) When Court Is Open. The court of appeals is always open for filing any paper, issuing and returning process, making a motion, and entering an order. The clerk's office with the clerk or a deputy in attendance must be open during business hours on all days except Saturdays, Sundays, and legal holidays. A court may provide by local rule or by order that the clerk's office be open for specified hours on Saturdays or on legal holidays other than New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

(b) Records.

(1) The Docket. The circuit clerk must maintain a docket and an index of all docketed cases in the manner prescribed by the Director of the Administrative Office of the United States Courts. The clerk must record all papers filed with the clerk and all process, orders, and judgments.

(2) Calendar. Under the court's direction, the clerk must prepare a calendar of cases awaiting argument. In placing cases on the calendar for argument, the clerk must give preference to appeals in criminal cases and to other proceedings and appeals entitled to preference by law.

(3) Other Records. The clerk must keep other books and records required by the Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, or by the court.

(c) Notice of an Order or Judgment. Upon the entry of an order or judgment, the circuit clerk must immediately serve a notice of entry on each party, with a copy of any opinion, and must note the date of service on the docket. Service on a party represented by counsel must be made on counsel.

(d) Custody of Records and Papers. The circuit clerk has custody of the court's records and papers. Unless the court orders or instructs otherwise, the clerk must not permit an original record or paper to be taken from the clerk's office. Upon disposition of the case, original papers constituting the record on appeal or review must be returned to the court or agency from which they were received. The clerk must preserve a copy of any brief, appendix, or other paper that has been filed.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005.)

10th Cir. R. 45

45.1 **Duties.**

(A) **Funds.** The clerk must account for all court funds.

(B) **Court sessions.** The clerk or a deputy must attend court sessions.

45.2 **Chief deputy clerk.** In the absence of the clerk, the chief deputy clerk is acting clerk.

45.3 **Office location.** The clerk's office is in the Byron White United States Courthouse, 1823 Stout Street, Denver, Colorado 80257. The telephone number is (303) 844-3157. The clerk's office email address is "10th_Circuit_Clerk@ca10.uscourts.gov."

Fed. R. App. P. Rule 46. Attorneys

(a) Admission to the Bar.

(1) Eligibility. An attorney is eligible for admission to the bar of a court of appeals if that attorney is of good moral and professional character and is admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States court of appeals, or a United States district court (including the district courts for Guam, the Northern Mariana Islands, and the Virgin Islands).

(2) Application. An applicant must file an application for admission, on a form approved by the court that contains the applicant's personal statement showing eligibility for membership. The applicant must subscribe to the following oath or affirmation:

"I, _____, do solemnly swear [or affirm] that I will conduct myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States."

(3) Admission Procedures. On written or oral motion of a member of the court's bar, the court will act on the application. An applicant may be admitted by oral motion in open court. But, unless the court orders otherwise, an applicant need not appear before the court to be admitted. Upon admission, an applicant must pay the clerk the fee prescribed by local rule or court order.

(b) Suspension or Disbarment.

(1) Standard. A member of the court's bar is subject to suspension or disbarment by the court if the member:

(A) has been suspended or disbarred from practice in any other court; or

(B) is guilty of conduct unbecoming a member of the court's bar.

(2) Procedure. The member must be given an opportunity to show good cause, within the time prescribed by the court, why the member should not be suspended or disbarred.

(3) Order. The court must enter an appropriate order after the member responds and a hearing is held, if requested, or after the time prescribed for a response expires, if no response is made.

(c) Discipline. A court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule. First, however, the court must afford the attorney reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 46

46.1 Entry of appearance.

(A) **Attorneys.** Within 10 days after an appeal or other proceeding is filed, counsel for the parties must file written appearances in a form approved by the court (*see* Appendix A, Form 2). Other attorneys whose names subsequently appear on filed papers must also file written appearances.

While the court requires a separate, formal, entry of appearance from all attorneys in the appeal or other proceeding, counsel should also note that attorneys who authorize their names to appear on filed papers have technically entered an appearance and are therefore responsible for the contents of such papers, and also for following all court rules and requirements. Attorneys who appear in a case in this court may not withdraw absent entry of a court order allowing them to do so.

(B) **Pro se.** A party wishing to appear without counsel must notify the clerk in writing by filing an entry of appearance on a form approved by the court (*see* Appendix A, Form 3).

(C) **Change of Address.** Once an appearance has been entered, the clerk must be notified of any subsequent change in address.

(D) **Certification of interested parties.**

(1) ***Certificate.*** Each entry of appearance must be accompanied by a certificate listing the names of all parties not in the caption of the notice of appeal so that the judges may evaluate possible disqualification or recusal.

(2) ***List.*** The certificate must list all persons, associations, firms, partnerships, corporations, guarantors, insurers, affiliates, and other legal entities that are financially interested in the outcome of the litigation. For corporations, *see* Fed. R. App. P. 26.1.

(3) ***Generic description.*** An individual listing is not necessary if a large group of persons or firms can be specified by a generic description.

(4) ***Attorneys.*** Attorneys not entering an appearance in this court must be listed if they have appeared for any party in a proceeding sought to be reviewed, or in related proceedings that preceded the original action being pursued in this court.

(5) ***No additional parties.*** If there are no additional parties, entities, or attorneys in any of these categories not previously reported to the court, a report to that effect also is required.

(6) ***Obligation to amend.*** The certificate must be kept current.

46.2 Admission to Tenth Circuit bar.

(A) **Prerequisite to practice.** Upon filing a case or entering an appearance in this court, an attorney who is not admitted to the Tenth Circuit bar must apply for admission. Forms are available from the circuit clerk.

(B) **Method of admission and fees.** Fed. R. App. P. 46 applies to admission to the Tenth Circuit bar. The amount of the admission fee will be set by the court and is payable to the clerk as trustee. The admission fee is waived for any attorney representing the United States or a federal agency or for any attorney appointed by the court to represent a party on appeal. Per the court's Plan For Attorney Disciplinary Enforcement, any lawyer disbarred from practice before the Circuit will be required to pay the fee prior to being readmitted.

(C) **Trust account.** The clerk will hold all admission fees in a trust account known as the "Attorney Admission Fund." The clerk will

defray expenses of the annual judicial conference, purchase books and other materials for the central and satellite circuit libraries, and support other activities and purchases that will benefit the bench and the bar. The clerk must account to the court annually for the trust funds.

46.3 Responsibilities in criminal and postconviction cases.

(A) **Prosecution of appeal.** Trial counsel must continue to represent the defendant until either the time for appeal has elapsed and no appeal has been taken or this court has relieved counsel of that duty. An attorney who files a notice of appeal in a criminal case or a postconviction proceeding under 28 U.S.C. § 2254 or § 2255 has entered an appearance in this court and may not withdraw without the court's permission.

(B) **Voluntary dismissal.** A voluntary motion to dismiss a criminal appeal or an appeal in a postconviction proceeding must contain a statement, signed by the appellant, demonstrating knowledge of the right to appeal and expressly electing to withdraw the appeal. If the statement is not included, counsel must show that exceptional circumstances prevented its inclusion. Proof of service must include service on the appellant him or herself.

46.4 Withdrawal.

(A) **Motion requirements.** Every motion to withdraw in a criminal appeal or in an appeal in a postconviction proceeding must include:

(1) the reasons for withdrawal;

(2) a statement that counsel has advised the client to obtain other counsel promptly, unless the client wishes to proceed pro se;

(3) if the client intends to proceed pro se, a statement that counsel has advised the client of the right to representation, if any, and of any pending obligations under the Federal Rules of Appellate Procedure or these rules;

(4) proof of service on the client and on all opposing parties; and

(5) one of the following:

(a) a showing that new counsel has been retained or appointed;

(b) a showing that the defendant has been granted leave to proceed on appeal without prepayment of fees or has been found eligible for benefits under 18 U.S.C. § 3006A, or that a completed motion for leave to proceed without prepayment of fees or for a finding of eligibility under 18 U.S.C. § 3006A has been filed in the district court;

(c) a signed statement from the client demonstrating knowledge of the right to retain new counsel or apply for appointment of counsel and expressly electing to appear without counsel; or

(d) a showing that exceptional circumstances prevent counsel from meeting any of the other requirements of this subsection.

(B) Frivolous appeals.

(1) ***Duty of counsel.*** In a direct criminal appeal, counsel who believes the appeal is frivolous and moves to withdraw or who believes opposition to a motion to dismiss would be frivolous must file an *Anders* brief and advise the court of the defendant's current address. *See Anders v. California*, 386 U.S. 738 (1967).

(2) ***Notice to defendant.*** Except as provided in (3), the clerk will send the defendant by certified mail, return receipt requested, a copy of the brief, the motion to withdraw, and a notice in the form set out in Appendix A, Form 4.

(3) ***Incompetent defendant.*** If the defendant has been found incompetent or there is reason to believe that the defendant is incompetent, the motion to withdraw must so state, and the matter

will be referred to the court for appropriate action.

46.5 Signing briefs, motions, and other papers; representations to court; sanctions.

(A) Signature. Every brief, motion, or other paper must be signed by at least one attorney of record — or, in a pro se case, by the party personally. The paper must state the signer's street address, email address and telephone number. Unless a rule or statute provides otherwise, a paper need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention. Parties should follow the requirements of the court's Order regarding *Electronic Submission of Documents and Conversion to an Electronic Case Management System* to format electronic documents. *See* www.ca10.uscourts.gov

(B) Representations to court. By presenting to the court — whether by signing, filing, submitting, or later advocating — a brief, motion, or other paper, an attorney or unrepresented party certifies that, to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) the paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or expense in the litigation;

(2) the issues presented are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or establishing new law; and

(3) the factual contentions or denials are supported in the record.

(C) Electronic Signature. An electronic signature is an original signature under this rule.

(D) Sanctions. If a brief, motion, or other paper is signed in violation of this rule, the court — on its own or on a party's motion — may impose upon the person who signed it, a represented party, or both, an appropriate

sanction, including:

(1) dismissal or affirmance of the appeal;

(2) monetary sanctions;

(3) initiation of disciplinary proceedings under the Plan for Attorney Disciplinary Enforcement; and

(4) an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the paper, including reasonable attorney's fees.

46.6 Discipline of counsel or parties.

(A) Sanctions for increasing cost of litigation. After giving notice and an opportunity to respond, this court may impose sanctions against parties and attorneys who unreasonably increase the cost of litigation. Examples of unreasonable cost increases include, but are not limited to, putting unnecessary material in records, briefs, appendices, addenda, and other papers.

(B) Court appointed counsel. If court appointed counsel for an appellant fails to comply with the Federal Rules of Appellate Procedure or with these rules, the clerk may issue an order requiring counsel to show cause why disciplinary action should not be taken. Action by the court may include monetary sanctions.

(C) Inadequate representation. After giving notice, the court may take disciplinary action against attorneys for inadequate representation on appeal.

46.7 Student practice.

(A) Appearance by law students.

(1) ***Consent of party*****.** An eligible law student may enter an appearance in this court on behalf of a party if the party has filed a statement of consent.

(2) ***Agreement of supervising attorney.*** A member of the Tenth Circuit bar must file an agreement to supervise the student. The agreement must contain:

(a) a certification by the supervising attorney that the student has satisfied the requirements of (C); and

(b) a copy of the law school certification required by (C)(3).

(B) Student participation.

(1) ***Briefs.*** A law student who has entered an appearance in a case under (A) may appear on a brief if the supervising attorney also appears on the brief.

(2) ***Oral argument.*** An eligible student may participate in oral argument if the supervising attorney is present in court.

(3) ***Other.*** The student may take part in other activities in connection with the case, subject to the direction of the supervising attorney.

(C) Student eligibility. To be eligible to make an appearance under this rule, the law student must provide a letter or otherwise document that he or she:

(1) is enrolled and in good standing in a law school accredited by the American Bar Association, or be a recent law school graduate awaiting the first bar examination after the student's graduation or the result of that examination;

(2) has completed the equivalent of 4 semesters of legal studies;

(3) is certified to be of good character and competent legal ability, and is qualified to provide the legal representation permitted by this rule, by either the law school's dean or a faculty member designated by the dean; and

(4) is familiar with the Federal Rules of Civil, Criminal, Appellate Procedure, the Federal Rules of Evidence, the American Bar Association Code of Professional Responsibility, and the rules of

this court.

(D) **Dean's letter.** A letter from the law school's dean or the designated faculty member describing the student's qualifications under (C) may demonstrate eligibility.

(E) **Supervising attorney.** An attorney who supervises an eligible law student under this rule must:

(1) be a member in good standing of the Tenth Circuit bar;

(2) assume personal professional responsibility for the quality of the student's work;

(3) guide and assist the student as necessary or appropriate under the circumstances;

(4) sign all documents filed with the court (the student may also sign documents, but the attorney's signature is required);

(5) appear with the student in any oral presentations before the court;

(6) file a written agreement to supervise the student; and

(7) supplement any written or oral statement made by the student to this court or opposing counsel if the court so requests.

Fed. R. App. P. Rule 47. Local Rules by Courts of Appeals

(a) Local Rules.

(1) Each court of appeals acting by a majority of its judges in regular active service may, after giving appropriate public notice and opportunity for comment, make and amend rules governing its practice. A generally applicable direction to parties or lawyers regarding practice before a court must be in a local rule rather than an internal operating procedure or standing order. A local rule must be consistent with – but not duplicative of – Acts of Congress and rules adopted under 28 U.S.C. § 2072 and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Each circuit clerk must send the Administrative Office of the United States Courts a copy of each local rule and internal operating procedure when it is promulgated or amended.

(2) A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

(b) Procedure When There Is No Controlling Law. A court of appeals may regulate practice in a particular case in any manner consistent with federal law, these rules, and local rules of the circuit. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local circuit rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 47

47.1 **Advisory committee.** As required by 28 U.S.C. § 2077(b), there is an advisory committee on procedures for the court of appeals.

(A) **Membership.** The committee consists of ten members: one circuit judge, one district judge, one United States attorney or assistant United States attorney, one federal public defender or assistant federal public defender, and one actively practicing member of the Tenth Circuit bar from each of the six states in the circuit. The committee may appoint ad hoc committees consisting of persons who are not members of the advisory committee.

(B) **Selection of members; organization.**

(1) ***Circuit judge.*** The circuit judge member is the chief judge of the circuit or a circuit judge designated by the chief judge. This member serves as chair.

(2) ***District judge; United States attorney; federal public defender.*** The district judge member and representatives of the United States attorneys' offices and federal public defenders' offices are selected by their respective associations within the circuit.

(3) ***Bar members.*** The members of the bar are selected by the circuit judges residing in each respective state. Candidates are selected from a list of at least 3 names submitted by the federal district judges residing in that state. Candidates must have substantial and active federal practices.

(4) ***Terms.*** Members serve 3 year terms, with a third of the terms expiring each year. Terms begin on April 1. No member, except the chief judge or a designee, may serve successive terms. But a person selected to fill an unexpired term may serve a successive term.

(5) ***Reporter; secretary.*** The chief staff counsel serves as reporter; the circuit executive, or a designee, serves as secretary.

(C) **Meetings.** The committee must have one regular meeting each

year and any special meetings that it decides it needs. The committee also may act by mail, telephone, or other means.

(D) **Duties.** The committee must advise the court about its operating procedures and rules. Among other things, the committee:

(1) provides a forum for continuous study of the operating procedures and published rules of the court;

(2) serves as a liaison between the bar, the public, and the court on procedural matters and suggestions for changes;

(3) considers and recommends amendments to the rules for adoption by the court;

(4) makes suggestions for and assists with programs at the circuit judicial conference; and

(5) makes any other studies, reports, and recommendations that the court requests or that the committee determines are appropriate.

47.2 **Circuit library.** The circuit's central and most satellite law libraries are open to all members of the Tenth Circuit bar. Books and materials may not be removed without the librarian's permission.

47.3 **Judicial conference.**

(A) **Authorization.** As permitted by 28 U.S.C. § 333, a judicial conference will be convened every other year, at a time and place designated by the chief judge, or at another court-determined interval that the law permits. In alternate years, the circuit may hold a conference for judges only.

(B) **Purpose.** The conference will consider the business of the circuit's federal courts and devise ways of improving the administration of justice within the circuit.

(C) **Duties of circuit executive.** The circuit executive, who serves as secretary of the conference, is responsible for all records and

accounts of the conference, and may perform other conference duties as the chief judge or circuit judicial council may require.

(D) **Agenda.** During judicial conferences, all judges of the Tenth Circuit will meet to discuss the dockets and the administration of justice in the circuit's judicial districts. The chief judge of each district will report on the condition of judicial business in that district and make recommendations about judicial business. In those years in which an open conference is held, all general meetings are open to attorney attendees and are devoted to improving the administration of justice in the Tenth Circuit.

(E) **Registration fee.** A registration fee, set by the judicial council, will be collected from each attorney attendee of the conference. The money collected must be used as directed by the chief judge to defray the expense of the conference. The circuit executive must maintain a judicial conference bank account and keep a record of all receipts and disbursements. During the year after each conference, the circuit executive must make a fiscal report to the judicial council.

Fed. R. App. P. Rule 48. Masters

(a) Appointment; Powers. A court of appeals may appoint a special master to hold hearings, if necessary, and to recommend factual findings and disposition in matters ancillary to proceedings in the court. Unless the order referring a matter to a master specifies or limits the master's powers, those powers include, but are not limited to, the following:

(1) regulating all aspects of a hearing;

(2) taking all appropriate action for the efficient performance of the master's duties under the order;

(3) requiring the production of evidence on all matters embraced in the reference; and

(4) administering oaths and examining witnesses and parties.

(b) Compensation. If the master is not a judge or court employee, the court must determine the master's compensation and whether the cost is to be charged to any party.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

No local rule.

APPENDIX A

FORMS

Form 1. Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court

United States District Court for the _____District of _____

File Number _____

A.B., Plaintiff	)	
	)	
v.	)	Notice of Appeal
	)	
C.D., Defendant	)	

Notice is hereby given that [(here name all parties taking the appeal) , (plaintiffs) (defendants) in the above named case,*] hereby appeal to the United States Court of Appeals for the _____ Circuit (from the final judgment) (from an order (describing it)) entered in this action on the _____ day of _____, 20___.

(s) _____
Attorney for [_____]
[Address:_____]
[Email Address:_____]

**See* Fed. R. App. P. 3(c) for permissible ways of identifying appellants.

(As amended Apr. 22, 1993, eff. Dec. 1, 1993.)

Form 2. Notice of Appeal to a Court of Appeals From a Decision of the United States Tax Court

UNITED STATES TAX COURT
Washington, D.C.

A.B., Petitioner	)	
	)	
v.	)	Docket No. _____
	)	
Commissioner of Internal Revenue, Respondent	)	

Notice of Appeal

Notice is hereby given that [here name all parties taking the appeal *], hereby appeals to the United States Court of Appeals for the _____ Circuit from the decision of this court entered in the above captioned proceeding on the _____ day of _____, 20___ (relating to _____).

(s) _____
Attorney for [_____]
[Address: _____]
[Email Address:_____]

**See* Fed. R. App. P. 3(c) for permissible ways of identifying appellants.

(As amended Apr. 22, 1993, eff. Dec. 1, 1993.)

Form 3. Petition for Review of Order of an Agency, Board, Commission or Officer

United States Court of Appeals for the _____ Circuit

A.B., Petitioner	)	
	)	
v.	)	Petition For Review
	)	
XYZ Commission, Respondent	)	

[(here name all parties bringing the petition *] hereby petitions the court for review of the Order of the XYZ Commission (describe the order) entered on _____, 20___.

(s) _____
Attorney for _____
[Address:_____]
_____[Email Address_____]

**See* Fed. R. App. P. 15.

(As amended Apr. 22, 1993, eff. Dec. 1, 1993.)

Form 4. Affidavit to Accompany Motion for Leave to Appeal in Forma Pauperis

United States District Court for the _____ District of _____

A.B., Plaintiff

v. Case No. _____

C.D., Defendant

Affidavit in Support of Motion	Instructions
I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States' laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)	Complete all questions in this application and then sign it. Do not leave any blanks. If the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.
Signed: _____	Date: _____

My issues on appeal are:

1.For both you and your spouse, estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any

amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use "gross amounts," that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	$_____	$_____	$_____	$_____
Self-employment	$_____	$_____	$_____	$_____
Income from real property (such as rental income)	$_____	$_____	$_____	$_____
Interest and dividends	$_____	$_____	$_____	$_____
Gifts	$_____	$_____	$_____	$_____
Alimony	$_____	$_____	$_____	$_____
Child support	$_____	$_____	$_____	$_____
Retirement (such as social security, pensions, annuities, insurance)	$_____	$_____	$_____	$_____
Disability (such as social security, insurance payments)	$_____	$_____	$_____	$_____
Unemployment payments	$_____	$_____	$_____	$_____
Public-assistance (such as welfare)	$_____	$_____	$_____	$_____
Other (specify): _____	$_____	$_____	$_____	$_____
Total monthly income:	$_____	$_____	$_____	$_____

2. List your employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. List your spouse's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. How much cash do you and your spouse have? $_____
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home (Value)	Other real estate (Value)	Motor vehicle # 1 (Value)
_____	_____	Make & year:_____
_____	_____	Model: _____
_____	_____	Registration #:_____

Motor vehicle # 2 (Value)	Other assets (Value)	Other assets (Value)
Make & year: _____	_____	_____
Model: _____	_____	_____
Registration #: _____	_____	_____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	$_____	$_____
Are real-estate taxes included?	[ ] Yes [ ] No	
Is property insurance included?	[ ] Yes [ ] No	
Utilities (electricity, heating fuel, water, sewer, and telephone)	$_____	$_____

Home maintenance (repairs and upkeep)	$_____	$_____
Food	$_____	$_____
Clothing	$_____	$_____
Laundry and dry-cleaning	$_____	$_____
Medical and dental expenses	$_____	$_____
Transportation (not including motor vehicle payments)	$_____	$_____
Recreation, entertainment, newspapers, magazines, etc.	$_____	$_____
Insurance (not deducted from wages or included in mortgage payments)	$_____	$_____
Homeowner's or renter's	$_____	$_____
Life	$_____	$_____
Health	$_____	$_____
Motor Vehicle	$_____	$_____
Other: _____	$_____	$_____
Taxes (not deducted from wages or included in mortgage payments) (specify): _____	$_____	$_____
Installment payments	$_____	$_____
Motor Vehicle	$_____	$_____
Credit card (name): _____	$_____	$_____
Department store (name): _____	$_____	$_____
Other: _____	$_____	$_____
Alimony, maintenance, and support paid to others	$_____	$_____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$_____	$_____
Other (specify): _____	$_____	$_____
Total Monthly Expenses:	$_____	$_____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?
[ ] Yes [ ] No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form?
[ ] Yes [ ] No

If yes, how much? $_____
If yes, state the attorney's name, address, and telephone number:

_____
_____
_____

11. Have you paid – or will you be paying – anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?
[ ] Yes [ ] No
If yes, how much? $_____
If yes, state the person's name, address, and telephone number:

_____
_____
_____

12. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

13. State the address of your legal residence.

_____
_____
Your daytime phone number: (____) _____
Your age: _____ Your years of schooling: _____
Your social security number: _____

Form 5. Notice of Appeal to a Court of Appeals from a Judgment or Order of a District Court or a Bankruptcy Appellate Panel

United States District Court for the _____ District of _____

In re _____, Debtor,	)	
	)	File No. _____
_____,	)	
Plaintiff	)	
	)	
v.	)	
	)	
_____,	)	
Defendant	)	

Notice of Appeal to the United States Court of Appeals
for the _____ Circuit

_____, the plaintiff [or defendant or other party] appeals to the United States Court of Appeals for the _____ Circuit from the final judgment [or order or decree] of the district court for the district of _____ [or bankruptcy appellate panel of the _____ circuit], entered in this case on _____, 20___ [here describe the judgment, order, or decree] _____. The parties to the judgment [or order or decree] appealed from and the names and addresses of their respective attorneys are as follows:

Dated _____
Signed _____
Attorney for Appellant
Address: _____
_____
Email Address: _____

(Added Apr. 25, 1989, eff. Dec. 1, 1989.)

Form 6. Certificate of Compliance With Rule 32(a)

Certificate of Compliance With Type-Volume Limitation,
Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

- ☐ this brief contains [*state the number of*] words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), *or*

- ☐ this brief uses a monospaced typeface and contains [*state the number of*] lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

- ☐ this brief has been prepared in a proportionally spaced typeface using [*state name and version of word processing program*] in [*state font size and name of type style*], *or*

- ☐ this brief has been prepared in a monospaced typeface using [*state name and version of word processing program*] with [*state number of characters per inch and name of type style*].

(s)_____

Attorney for _____

Dated: _____

10TH CIR. FORM 1. DOCKETING STATEMENT INSTRUCTIONS AND FORM

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157

DOCKETING STATEMENT INSTRUCTIONS

PLEASE FOLLOW THE INSTRUCTIONS REGARDING CONTENT, ESPECIALLY THE ATTACHMENTS, VERY CAREFULLY.

I. APPEALS FROM DISTRICT COURT

The appellant must complete the attached Docketing Statement and file it with the clerk of the court of appeals within 10 days after filing the notice of appeal. An original ~~and four copies must be filed. *See* 10th Cir. R. 3.4.~~ hard copy must be filed with the clerk of court, and the statement and attachments must also be emailed to esubmission@ca10.uscourts.gov The Docketing Statement must be accompanied by proof of service on all other parties to the appeal. If possible, the docketing statement should be emailed as a single document, with attachments.

Copies of the following documents must be attached to all copies of the Docketing Statement:

A. The district court docket sheet which includes entry of the notice of appeal. (In multiple civil appeals arising out of the same or consolidated district court cases, complete copies of the district court docket sheet is only required to be attached to the Docketing Statement filed by the first appellant. Subsequent appellants shall attach to their docketing statements a copy of that page of the district court docket sheet showing the filing of the notice of appeal and any post-judgment motions.);

B. The final judgment or order appealed;

C. All pertinent findings and conclusions, opinions, or orders that form the basis for the appeal;

D. Any motion filed under Fed. R. Civ. P. 50(b), 52(b), 59, 60, including any motion for reconsideration, and in a criminal appeal, a motion for judgment of acquittal, for arrest of judgment or for a new trial, with the certificate of service, and the dispositive order(s);

E. Any motion for extension of time to file the notice of appeal and the dispositive order; and

F. The notice of appeal.

Please complete all sections of the Docketing Statement form except Sections I-B and I-C. Section V should only be completed in criminal appeals.

II. PETITIONS FOR REVIEW OR APPLICATIONS FOR ENFORCEMENT OF AGENCY ORDERS

The Docketing Statement must be filed in the court of appeals within 14 days after filing a petition for review or application for enforcement. An original ~~and four copies must be filed.~~hard copy must be filed with the clerk of court, and the statement and attachments must also be emailed to esubmission@ca10.uscourts.gov The Docketing Statement must be accompanied by proof of service on all other parties. If possible, the docketing statement should be emailed as a single document, with attachments.

Copies of the following documents must be attached to all copies of the Docketing Statement:

A. The agency docket sheet with the entry of the order to be reviewed;

B. The order to be reviewed; and

C. The petition for review or application for enforcement.

Please complete all sections of the Docketing Statement except Sections I-A, I-C,

and V.

III. APPEALS FROM UNITED STATES TAX COURT

The Docketing Statement must be filed in the court of appeals within 14 days after the appeal is docketed. An original ~~and four copies must be filed.~~hard copy must be filed with the clerk of court, and the statement and attachments must also be emailed to esubmission@ca10.uscourts.gov The Docketing Statement must be accompanied by proof of service on all other parties. If possible, the docketing statement should be emailed as a single document, with attachments.

Copies of the following documents must be attached to all copies of the Docketing Statement:

A. The Tax Court docket sheet with the entry of the notice of appeal;

B. The decision appealed;

C. The judgment appealed; and

D. The notice of appeal.

E. If the notice of appeal was filed by mail, proof of the postmark.

Please complete all sections of the Docketing Statement form except Sections I-A, I-B, and V.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DOCKETING STATEMENT

Case Name: _____

Appeal No. (if available)_____

Court/Agency Appeal From: _____

Court/Agency Docket No. _____District Judge: _____

Party or Parties filing Notice of Appeal/Petition: _____

_____

I. TIMELINESS OF APPEAL OR PETITION FOR REVIEW

A. APPEAL FROM DISTRICT COURT

1. Date notice of appeal filed:_____

   a. Was a motion filed for an extension of time to file the notice of appeal? If so, give the filing date of the motion, the date of any order disposing of the motion, and the deadline for filing notice of appeal: _____
   _____

   b. Is the United States or an officer or an agency of the United States a party to this appeal? _____

2. Authority fixing time limit for filing notice of appeal:

Fed. R. App. 4 (a)(1)(A) ____ Fed. R. App. 4(a)(6) ____
Fed. R. App. 4 (a)(1)(B) ____ Fed. R. App. 4(b)(1) ____
Fed. R. App. 4 (a)(2) ____ Fed. R. App. 4(b)(3) ____

Fed. R. App. 4 (a)(3) ____ Fed. R. App. 4(b)(4) ____
Fed. R. App. 4 (a)(4) ____ Fed. R. App. 4(c) ____
Fed. R. App. 4 (a)(5) ____

Other: _____

3. Date final judgment or order to be reviewed was filed and **entered** on the district court docket: _____

4. Does the judgment or order to be reviewed dispose of **all** claims by and against **all** parties? *See* Fed. R. Civ. P. 54(b).

_____

(If the order being appealed is not final, please answer the following questions in this section.)

a. If not, did district court direct entry of judgment in accordance with Fed. R. Civ. P. 54(b)? When was this done? _____

b. If the judgment or order is not a final disposition, is it appealable under 28 U.S.C. § 1292(a)? _____

c. If none of the above applies, what is the **specific** statutory basis for determining that the judgment or order is appealable? _____

5. Tolling Motions. *See* Fed. R. App. P. 4(a)(4)(A); 4(b)(3)(A).

a. Give the filing date of any motion under Fed. R. Civ. P. 50(b), 52(b), 59, 60, including any motion for reconsideration, and in a criminal appeal any motion for judgment of acquittal, for arrest of judgment or for new trial filed in the district court: _____

b. Has an order been entered by the district court disposing of that motion, and, if so, when? _____
_____

6. Bankruptcy Appeals. (To be completed only in appeals from a judgment, order or decree of a district court in a bankruptcy case or from an order of the Bankruptcy Appellate Panel.)

Are there assets of the debtor subject to administration by a district or bankruptcy court? _____

a. Please state the approximate amount of such assets, if known. _____

B. REVIEW OF AGENCY ORDER (To be completed only in connection with petitions for review or applications for enforcement filed directly with the Court of Appeals.)

1. Date petition for review was filed: _____

2. Date of the order to be reviewed: _____

3. Specify the statute or other authority granting the court of appeals jurisdiction to review the order:_____
_____

4. Specify the time limit for filing the petition (cite specific statutory section or other authority): _____
_____

C. APPEAL OF TAX COURT DECISION

1. Date notice of appeal was filed:_____
(If notice was filed by mail, attach proof of postmark.)

2. Time limit for filing notice of appeal: _____

3. Date of entry of decision appealed: _____

4. Was a timely motion to vacate or revise a decision made under the Tax Court's Rules of Practice, and if so, when? *See* Fed. R. App. P. 13(a) _____

II. LIST ALL RELATED OR PRIOR RELATED APPEALS IN THIS COURT WITH APPROPRIATE CITATION(S). If none, please so state.

III. GIVE A BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW.

IV. ISSUES RAISED ON APPEAL.

V. ADDITIONAL INFORMATION IN CRIMINAL APPEALS.

A. Does this appeal involve review under 18 U.S.C. § 3742(a) or (b) of the sentence imposed? _____

B. If the answer to question in A is yes, does the defendant also challenge the judgment of conviction? _____

C. Describe the sentence imposed. _____
_____

D. Was the sentence imposed after a plea of guilty? _____

E. If the answer to D is yes, did the plea agreement include a waiver of appeal and/or collateral challenges? _____

~~E~~F. Is defendant on probation or at liberty pending appeal? _____

G. If the defendant is incarcerated, what is the anticipated release date if the judgment of conviction is fully executed? _____

NOTE: In the event expedited review is requested, the defendant shall consider whether a transcript of any portion of the trial court proceedings is necessary for the appeal. Necessary transcripts must be ordered at the time of appeal by completing and delivering the transcript order form to the clerk of the district court when a notice of appeal is filed. Defendant/appellant must refrain from ordering any unnecessary transcript as this will delay the appeal. If the court orders this appeal expedited, it will set a schedule for preparation of necessary transcripts, for designation and preparation of the record on appeal, and for filing briefs. If issues other than sentencing are raised by this appeal, the court will decide

whether bifurcation is desirable.

VI. INDICATE WHETHER ORAL ARGUMENT IS DESIRED IN THIS APPEAL. If so, please state why.

VII. ATTORNEY FILING DOCKETING STATEMENT:

Name**:** _____ Telephone: _____

Firm: _____

Address: _____
_____
_____

PLEASE IDENTIFY ON WHOSE BEHALF THE DOCKETING STATEMENT IS FILED:

A. ☐ Appellant

☐ Petitioner

☐ Cross-Appellant

B. **PLEASE IDENTIFY WHETHER THE FILING COUNSEL IS**

☐ Retained Attorney

☐ Court-Appointed

☐ Employed by a government entity
(please specify_____)

☐ Employed by the Office of the Federal Public Defender.

_____ _____
Signature Date

NOTE: A copy of the court or agency docket sheet, the final judgment or order appealed from, any pertinent findings and conclusions, opinions, or orders, any motion filed under Fed. R. Civ. P. 50(b), 52(b), 59, or 60, including any motion for reconsideration, for judgment of acquittal, for arrest of judgment, or for new trial, and the dispositive order(s), any motion for extension of time to file notice of appeal and the dispositive order, and the notice of appeal or petition for review **must be attached to ~~all copies of~~ the Docketing Statement**, except as otherwise provided in Section I of the instructions.

The original ~~and four copies of this Docketing Statement~~ must be filed with the clerk of court. An e-submitted copy, with attachments, must be submitted to esubmission@ca10.uscourts.gov.

This Docketing Statement must be accompanied by proof of service.

The following Certificate of Service may be used.

CERTIFICATE OF SERVICE

I, _____ hereby certify that on
[appellant/petitioner or attorney therefor]

_____ I sent [emailed] a copy of the foregoing **Docketing Statement**
[date]

to:_____, at _____
[counsel for/or appellee/respondent]

_____

_____, the last known address, by way of United States mail or courier, or email address if service is via email.

_____
Signature

_____
Dated signed

_____
_____
_____
_____
[Printed name, email address and street address of person completing service]

10TH CIR. FORM 2. ENTRY OF APPEARANCE AND CERTIFICATE OF INTERESTED PARTIES UNDER 10TH CIR. R. 46.1

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

	ENTRY OF APPEARANCE AND CERTIFICATE OF INTERESTED PARTIES
v.	No.

INSTRUCTIONS: COUNSEL FOR A PARTY MUST EXECUTE AND FILE AN ORIGINAL AND THREE COPIES OF THIS FORM, WITH PROOF OF SERVICE ON ALL OTHER PARTIES. MULTIPLE COUNSEL APPEARING FOR A PARTY OR PARTIES AND WHO SHARE THE SAME MAILING ADDRESS MAY ENTER THEIR APPEARANCES ON THE SAME FORM BY EACH SIGNING INDIVIDUALLY.

The undersigned attorney(s) appear(s) as counsel for _____ _____, Appellant/Petitioner or Appellee/Respondent.

Please check one:

❑ Attached to this form is a completed certificate of interested parties and/or attorneys not otherwise disclosed, who are now or have been interested in this litigation or any related proceeding. (**FILE ORIGINAL AND THREE COPIES.**)

❑ There are no such parties, or any such parties have been disclosed to the court. (**FILE ORIGINAL AND THREE COPIES.**)

_____	_____
Name of Counsel (type or print)	Name of Counsel
_____	_____
Signature of Counsel	Signature of Counsel
_____	_____
Mailing and Email Address	Mailing and Email Address
_____	_____
Telephone Number	Telephone Number

I hereby certify that a copy of this Entry of Appearance and Certificate of Interested Parties was ~~mailed~~mailed/emailed on

_____
(please insert date)

to_____
(*See* Fed. R. App. P. 25 (b))

_____
(Signature)

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

	CERTIFICATE OF INTERESTED PARTIES
v.	No.

The following are parties to this litigation, including persons or other entities financially interested in the outcome of the litigation, but not revealed by the caption on appeal, and attorneys not entering an appearance in this court who have appeared for any party in prior trial or administrative proceedings sought to be reviewed, or in related proceedings that preceded the subject action in this court *see* 10th Cir. R. 46.1(D):

(Attach additional pages if necessary.)

_____ _____
Signature Name (type or print)

_____
Mailing and Email Addresses

_____
City State Zip Code

_____
Area Code/Telephone No.

10TH CIR. FORM 3. ENTRY OF APPEARANCE — PRO SE

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

	ENTRY OF APPEARANCE PRO SE
v.	No.

INSTRUCTIONS: A PARTY WHO APPEARS WITHOUT COUNSEL MUST NOTIFY THE CLERK BY COMPLETING AND SIGNING THIS FORM AND FILING AN ORIGINAL AND THREE COPIES. THE FEDERAL RULES OF APPELLATE PROCEDURE AND TENTH CIRCUIT RULES REQUIRE THAT ALL PAPERS SUBMITTED TO THE COURT FOR FILING BE SIGNED BY THE FILING PARTY AND THAT COPIES BE SERVED ON OPPOSING PARTIES OR THEIR ATTORNEY. THE ORIGINAL OF EVERY PAPER SUBMITTED FOR FILING MUST CONTAIN PROOF OF SERVICE IN A FORM SIMILAR TO THAT ON THE REVERSE OF THIS FORM. ANY PAPER THAT DOES NOT CONTAIN THE REQUIRED PROOF OF SERVICE MAY BE DISREGARDED BY THE COURT OR RETURNED.

I am appearing pro se as the (check one):

❑ Appellant, ❑ Petitioner, ❑ Appellee, or ❑ Respondent in this case.

I certify (check one):

❑ All parties to this litigation, including parties financially interested in the litigation, are revealed by the caption on appeal, or

❑ Parties to this litigation not revealed by the caption on appeal are as follows:

(Attach additional pages if necessary.)

All notices regarding the case should be sent to me at the address below. If my mailing address changes, I will promptly notify the clerk in writing of my new address.

_____ _____
Signature Name (type or print)

_____
Mailing Address

_____
City State Zip Code

_____
Area Code/Telephone No.

PROOF OF SERVICE

I certify that on_____, I mailed a copy of this
(Date)

Entry of Appearance to _____
(Opposing Party or Attorney)

at (address) _____

_____

_____

Dated: _____, 20___.

_____

Signature

10TH CIR. FORM 4. NOTICE THAT COUNSEL HAS MOVED TO WITHDRAW UNDER 10TH CIR. R. 46.4(B)(2)

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

	NOTICE THAT COUNSEL HAS MOVED TO WITHDRAW
v.	No.

TO: _____
(Name)

_____
(Street Address or Prison Box)

_____
(City, State, Zip Code)

Your attorney filed a brief on _____, ____, stating a belief that your appeal is frivolous and requesting permission to withdraw from the case. Please be advised:

(1) You have **30 days** from the date this notice was mailed to raise any points to show why your conviction and/or sentence should be set aside.

(2) If you do not respond within the 30 days, the court may affirm or dismiss your appeal **without further notice**. An affirmance or dismissal would mean that your case would be finally decided against you.

(3) If you want to explain why the court should not affirm or dismiss your appeal, and you believe that there is a very good reason why you will not be able to file your objections to affirmance or dismissal with the court within the 30-day limit, you should write immediately to the court and ask for up to 30 more days. If additional time is granted, you must file your objections and state the reasons

why the court should not affirm or dismiss your appeal before your additional time expires.

(4) You do not have a right to another attorney unless this court finds, based upon your objections, that your case requires further briefing or argument. If the court finds that your case requires further briefing or argument, an attorney will be appointed to handle your appeal.

If you want to write to this court, address your letter to:

Clerk of the Court
United States Court of Appeals
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257

Be sure to show the name and number of your case clearly on any material you send to the court.

Notice mailed _____ _____
Date Deputy Clerk, U.S. Court of Appeals

10TH CIR. FORM 5. REPORT OF COUNSEL CONFERENCE UNDER 10TH CIR. R. 33.2

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

	REPORT OF RULE 33.2 COUNSEL CONFERENCE
v.	No.

INSTRUCTIONS: Counsel for appellant/petitioner must complete this form in those **civil** cases in which a counsel conference is required by 10 Cir. R. 33.2(A). The report must be mailed within 10 days of initiating a counsel conference under 10th Cir. R. 33.2(C), to:

Circuit Mediation Office
United States Court of Appeals for the Tenth Circuit
1823 Stout Street, Denver, CO 80257
(303) 844-6017

Counsel for appellant/petitioner certifies that settlement was discussed with opposing counsel on _____ or that it was impossible for counsel to discuss settlement because _____

_____

_____

Settlement of the appeal ❑ was ❑ was not reached.

Counsel ❑ do ❑ do not plan to have further settlement discussions.

Date: _____

_____
Name of Counsel (Type or Print)

_____
Signature

_____
Address (including email address)

_____

Telephone

APPENDIX B

APPELLATE TRANSCRIPT MANAGEMENT PLAN FOR THE TENTH CIRCUIT

The Court Reporter Management Plans adopted by the district courts within this circuit and approved by the Judicial Council are incorporated and made a part of this plan to the extent that they provide for the production of appellate transcripts. To further promote the prompt production of transcripts, which contributes to the timely processing of appeals, the Judicial Council of the Tenth Circuit adopts the following guidelines:

1. ***District Court Reporter Coordinators***

Each district court must appoint a Court Reporter Coordinator within the clerk's office, who will be responsible for:

a) monitoring the preparation and filing of transcripts, and ensuring compliance with this Plan,
b) bringing to the attention of the clerk of the court of appeals violations of this Plan, which cannot be resolved locally, and
c) ensuring that communications are forwarded to and received by the appropriate parties.

2. ***Calculation of Times***

No transcript order will be deemed complete for purposes of calculation of delivery dates until satisfactory financial arrangements have been made with the court reporter. The Tenth Circuit Transcript Order Form contains the reporter's certification that arrangements for payment have been made. If the arrangements subsequently fail, the burden will be on reporters to notify this court in writing that the litigant has failed to abide by the arrangements for payment. This notification shall include copies of letters requesting payment or deposit. The court will enforce reporters' legitimate requests for payment by threat of dismissal of appeals for failure to prosecute.

3. ***Extensions of Time***

An extension of time pursuant to Federal Rule of Appellate Procedure 11(b)(1)(B) does not waive the mandatory fee reduction. To obtain a waiver, a separate request alleging appropriate circumstances **must** be made.

4. ***Waiver of Mandatory Fee Reduction***

The clerk of the court of appeals may waive the mandatory fee reduction or other sanctions imposed by this Plan, upon receipt of a timely request, in circumstances such as the following:

(a) *Illness or Incapacity of the Reporter*

A reporter requesting a waiver of the fee reduction due to illness or other incapacity must provide a letter from the district court reporter coordinator which verifies the nature and expected duration of the illness or other incapacity. This certification must be attached to a request for extension and will be kept confidential. The request must include the date by which the transcript will be completed.

(b) *Planned Vacation*

The reporter must submit a vacation schedule approved by the trial judge. The request must include the date by which the transcript will be completed.

(c) *Lengthy or Complex Litigation, Excessive Pages Ordered*

When the transcript in a particular case will require additional time, the reporter must provide a certification from the district court judge stating the reason additional time is required. When multiple orders are received at the same time, the reporter may request an extension in all cases, but must provide copies of the orders and the estimated length of the transcripts involved. The request must include the date by which each transcript will be completed.

A form for requesting an extension of time and/or waiver is attached as Exhibit I. The Judicial Council prefers that this form be used.

No provision is made for extensions of time for transcript backlog. Transcript production is considered by the Administrative Office to be compensated by transcript fees. Reporters are expected to hire note readers or substitutes when transcripts cannot be completed within specified times. The hiring of note readers and/or substitutes does not excuse reporters, however, from requesting extensions of time under Fed. R. App. P. 11(b) when a transcript cannot be completed within the prescribed time.

Occasionally, counsel may request that a reporter suspend production of a transcript. Transcript production may be stopped only by order of the court of appeals. It is the responsibility of the party who ordered the transcript to move for

suspension of production.

5. *Substitute Court Reporters*

Pursuant to Judicial Conference policy, reporters are expected to hire substitutes when they are unable to complete transcripts on time. A reporter who cannot file a transcript before the ninetieth day after it is ordered must remove him or herself from courtroom duties and provide a substitute.

Official reporters are responsible for transcript production by their substitutes. Requests for extensions received from substitute reporters will be returned to the district court reporter coordinator so the appropriate official reporter can make a proper request.

6. *Court Reporters' Manual*

The *Court Reporters' Manual*, Volume VI of the *Guide to Judicial Policies and Procedures* is incorporated into these guidelines. Reporters in this circuit are expected to know and abide by the rules, regulations and policies contained in it.

The pages of a transcript are to be numbered in a single series of consecutive numbers for each proceeding, regardless of the number of days involved. Pages in a multiple-volume transcript must be numbered consecutively for an entire multiple-volume transcript. *See* VI *Guide to Judiciary Policies and Procedures-Court Reporters' Manual* ch. XVIII, pt.k(2) (example set 2) (10/91). *See also United States v. Davis*, 953 F.2d 1482, 1487 n.2 (10th Cir. 1992).

7. *Miscellaneous Provisions*

Where there are multiple reporters responsible for a single transcript order, one must take the lead. The lead reporter must be an official court reporter. When a transcript is being paid for under the Criminal Justice Act the lead reporter must assist in obtaining the district judge's signature on the completed form CJA 24. If a transcript order form is incomplete or inaccurate, the lead reporter must give written notice of the deficiency to the ordering party with a copy to this court.

EXHIBIT I

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Court of Appeals Docket Number(s):_____

Short Title:_____

District Court Docket Number(s):_____

REQUEST FOR EXTENSION OF TIME TO FILE TRANSCRIPT

I request an extension of time to file the transcript until _____.
This extension is necessary because _____
_____
_____

Attach letter from court reporter coordinator if necessary.

I understand that the grant of an extension does not waive the mandatory fee reduction.

Signature:_____
Official Court Reporter

REQUEST FOR WAIVER OF MANDATORY FEE REDUCTION

I request waiver of the mandatory fee reduction for (check one):

_____ Illness or other incapacity - I have attached the required certification.

_____ Planned vacation - I have attached the required certification.

_____ Lengthy or Complex Litigation or Excessive Pages Ordered - I have attached the required documentation.

Signature:_____
Official Court Reporter

ATTACH PROOF OF SERVICE ON ALL COUNSEL.

APPENDIX C

GENERAL ORDER REGARDING SCHEDULING CONFLICTS

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

In re: Guidelines for Resolving Scheduling Conflicts with Oklahoma Courts	

GENERAL ORDER
FILED May 21, 1998

Before **SEYMOUR**, Chief Judge, **PORFILIO**, **ANDERSON**, **TACHA**, **BALDOCK**, **BRORBY**, **EBEL**, **KELLY**, **HENRY**, **BRISCOE**, **LUCERO**, and **MURPHY**.

For the purpose of resolving conflicts that arise in scheduling between this court and the federal district courts in Oklahoma or the Oklahoma state courts, the court adopts the following guidelines:

(A) An attorney shall not be deemed to have a conflict unless:

(1) the attorney is lead counsel in two or more of the actions affected, and

(2) the attorney certifies that the matters cannot be adequately handled, and the client's interest adequately protected, by other counsel for the party in the action or by other attorneys in lead counsel's firm; certifies compliance with this rule and has nevertheless been unable to resolve the conflicts; and certifies in the notice a proposed resolution by list of such cases in the order of priority specified by this rule.

(B) When an attorney is scheduled for a day certain by trial calendar, special setting or court order to appear in two or more courts (trial or appellate; state or federal), the attorney shall give prompt written notice, as specified in (A) above, of the conflict to opposing counsel, to the clerk of each court and to the judge before whom each action is set for hearing (or to an appropriate judge if there has been no designation of a presiding judge). The written notice shall contain the attorney's proposed resolution of the appearance conflicts in accordance with the priorities established by this rule and shall set forth the order of cases to be tried with a listing of the date and data required by (B)(1)-(4) as to each case arranged in the order in which the cases should prevail under this rule. Attorneys confronted by such conflicts are expected to give written notice as soon as the conflict arises but in any event at least seven (7) days prior to the date of the conflicting settings. In resolving scheduling conflicts, the following priorities should ordinarily prevail:

(1) Criminal (felony) actions shall prevail over civil actions set for trial or appellate proceedings;

(2) Jury trials shall prevail over non-jury matters, including trials and administrative proceedings;

(3) Trials shall prevail over appellate arguments, hearings and conferences;

(4) Appellate proceedings prevail over all trial hearings, other than actual trials.

(5) Within each of the above categories only, the action which was first set shall take precedence.

(C) In addition to the above priorities, consideration should be given to the comparative age of the cases, their complexity, the estimated trial time, the number of attorneys and parties involved, whether the trial involves a jury, and the difficulty or ease of rescheduling.

(D) The judges of the courts involved in a scheduling conflict shall promptly confer, resolve the conflict, and notify counsel of the resolution. The judge presiding over the older case (i.e., the earliest filed case) will be responsible for initiating this communication.

(E) Conflict resolution shall not require the continuance of the other matter or matters not having priority. In the event the matter determined to have priority is disposed of prior to the scheduled time set, the attorney shall immediately notify all affected parties, including the court affected, of the disposal and shall, absent good cause shown to the court, proceed with the remaining case or cases which did not have priority if the setting was not vacated.

(F) Nothing in these guidelines is intended to prevent courts from voluntarily yielding a favorable scheduling position, and judges of all courts are urged to communicate with each other in an effort to lessen the impact of conflicts and continuances on all courts.

Entered for the Court

Patrick Fisher
Clerk of Court

ADDENDUM I

CRIMINAL JUSTICE ACT PLAN
UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PREAMBLE

Pursuant to the Criminal Justice Act (Act), 18 U.S.C. § 3006A(b), the court adopts the following plan for furnishing representation in criminal cases on appeal. This amends the plan adopted by the Circuit Council on February 11, 1971 and which was last amended on January 1, 1996. When requested, representation will be provided to every person who is entitled to representation under the Act.

I. Appointment of Counsel in the Tenth Circuit

Absent a change in financial conditions, any determination that a person is eligible for Criminal Justice Act counsel made in the district court shall continue on appeal. In its discretion, the court of appeals may appoint the attorney who represented the eligible person in the district court, the special appellate division of the Federal Public Defender's office for the District of Colorado, another Federal Public Defender's office from the circuit, or it may appoint a lawyer from the court's Criminal Justice Act Panel.

Appointed counsel must continue to represent the appellant until relieved by the court of appeals. 10th Cir. R. 46.3(A). If filed in compliance with 10th Cir. R. 46.4(A), trial counsel's request to be relieved from representation on appeal shall be given due consideration. While the court recognizes there may be benefits to maintaining continuity of counsel, it also recognizes that the skills necessary to proceed as appellate counsel may differ from those required for trial counsel. Substitution of counsel shall not reflect negatively in any way on the conduct of the lawyer involved. The court will require, however, that trial counsel perfect the appeal prior to seeking withdrawal.

II. Composition of Panel of Private Attorneys

A. *Criminal Justice Act Panel*

The Court will establish a panel of private attorneys (the CJA Panel) who are eligible and willing to accept appointments in cases where representation is

required under 18 U.S.C. §3006A. These attorneys, along with the lawyers from the Appellate Division of the Federal Public Defender's Office for the District of Colorado, shall constitute the core group from which appointments shall be made. The Court shall approve private attorneys for membership on the CJA Panel after receiving recommendations from the Standing CJA Committee, established pursuant to Section III of this Plan.

B. *Size*

The CJA Panel will not have a size limitation, but will include adequate attorney representation from each of the districts in the circuit. The Standing Committee will view applications for membership on the panel with an eye towards identifying qualified appellate counsel from each state in the Tenth Circuit.

C. *Eligibility*

To be eligible for service on the CJA Panel, lawyers must be members of the Tenth Circuit bar in good standing. They must certify that they have a working knowledge of the Federal Rules of Appellate Procedure and federal criminal law. Counsel on the list must be willing to accept at least one CJA appellate appointment each year.

D. *Term of Service*

There are no fixed terms for panel membership. Lawyers will remain on the panel until they resign or are removed in accordance with the procedure established in section II(G).

E. *Application for Membership*

Applications for membership on the panel will be available in the office of the Clerk of Court and on the circuit's website at www.ca10.uscourts.gov. Completed applications must be submitted to the Clerk of Court for transmittal to the court's Standing Committee on the Criminal Justice Act.

F. *Maintenance of the List*

The Clerk of Court shall maintain a public list in the clerk's office of the members of the CJA Appellate Panel, including current street and email addresses and telephone numbers.

G. *Removal from the Panel*

The court is very appreciative of the time and commitment required to accept appellate appointments. Membership on the panel is not a property right, however, and the refusal to accept appointments on a consistent basis will lead the court to assume the lawyer has resigned from the panel. Counsel will be notified in writing of any change in status resulting from the failure to accept appointments. The Standing Committee may also recommend removal from the panel for other reasons. That recommendation must be in writing and will be forwarded to the court for consideration. If the court decides to accept the recommendation, counsel will be given notice of the proposed basis for removal and will be provided an opportunity to respond in writing. The court of appeals will make all final decisions regarding removal. If a panel attorney is removed, he or she will receive a letter of explanation from the court. Any attorney whose resignation is assumed because he or she has not accepted cases may file a request to return to active status. The request must include an explanation regarding the refusal to accept appointments. The Standing Committee will make a recommendation to the court on those types of requests. Attorneys removed for any other reason may file a renewed application no earlier than one year from the date of removal. In the application, counsel must note the earlier removal and explain why they believe they should be allowed to return to the panel.

III. Standing Committee On The Criminal Justice Act

A. *Membership and Structure*

The Chief Judge, or the Chief Judge's delegate, shall appoint the Standing Committee. It shall be composed of two lawyers from Oklahoma, and one lawyer each from the remaining states in the circuit. Members may be private attorneys or lawyers from the various Federal Public Defenders' offices. These attorneys shall serve staggered three year terms, and may serve two consecutive terms. In addition to these seven members, the Federal Public Defender for the Districts of Colorado and Wyoming shall be a permanent member of the Standing Committee. One of the other positions on the Committee must be filled with one of the other Federal Public Defenders from the circuit. The Chief Judge may also appoint a liaison to the Committee from the court's legal staff. That person will not be a

Committee member, but will be available to both the court and members for committee support and consultation.

B. *Duties*

The Standing Committee shall review the qualifications of applicants for the panel, conduct further inquiries as may be indicated, and shall make recommendations to the court of appeals for placement of lawyers on the panel. The Standing Committee shall also review the operation of the appellate panel on a periodic basis and shall make recommendations to the court regarding any necessary changes. This review may include investigation of complaints concerning panel attorneys. The Committee may make recommendations regarding removal of a lawyer from the list to the court of appeals. The Standing Committee's recommendations to the court shall remain confidential. The CJA Panel list, however, will be public information.

IV. Change In Financial Conditions

If a party becomes financially unable to employ counsel on appeal, a motion seeking a finding that the party is eligible for the appointment of counsel must be made in district court. *See* 18 U.S.C. § 3006A. Because the district court must make factual findings regarding the defendant's financial eligibility, appropriate forms, particularly a CJA 20 form, should be filed in that court first. Upon issuance of an order finding the person financially eligible, counsel may file a motion in this court for appointment of counsel under the statute. The court may, at any time, examine or re-examine the financial status of the defendant. If a court finds that the defendant is financially able to obtain counsel or make partial payments for representation, the court may deny or terminate an appointment pursuant to subsection (c) of the Act or require partial payment to be made pursuant to subsection (f) of the Act.

V. Death Penalty Cases

Pursuant to the Guidelines for Administration of the Criminal Justice Act, the court may, in an appropriate death penalty case, appoint and compensate under the Act an attorney or attorneys from a state or local public defender organization or from a legal aid agency or other non-profit organization.

VI. Petition For Writ of Certiorari

If the judgment of this court is adverse to the client, counsel must inform the client of the right to petition the Supreme Court of the United States for a writ of certiorari. Counsel must file a petition for a writ of certiorari if the client requests that such a review be sought, and, in counsel's considered judgment, there are grounds for seeking Supreme Court review that are not frivolous and are consistent with the standards for filing a petition contained in the Rules of the Supreme Court and applicable case law. If, on the other hand, the client requests that counsel file a petition for a writ of certiorari and, in counsel's considered judgment, there are no such grounds for seeking Supreme Court review that are non-frivolous and for filing a petition as defined in the Rules of the Supreme Court and applicable case law, counsel should promptly so advise the client and submit to this court a written motion for leave to withdraw from the representation after the entry of judgment. If this court grants counsel's motion and terminates counsel's appointment, counsel must so advise the client in writing as soon as possible. The writing shall also advise the client of his or her right to file a pro se petition for a writ of certiorari.

VII. QUALITY OF REPRESENTATION

Attorneys appointed pursuant to any provisions of the Act must conform to the highest standards of professional conduct, including, but not limited to, the provisions of the American Bar Association's Code of Professional Responsibility.

VIII. COMPENSATION

A. *Claims*

All claims for compensation and expenses must be submitted to the clerk, on the voucher enclosed with the appointment, at the conclusion of the representation. All claims must be supported by appropriate documentation. In each case, the court will fix the compensation to be paid the attorney as provided in the Act. Counsel appointed in direct criminal appeals and non-death penalty 28 U.S.C. §§ 2254 and 2255 matters should review the Court's general *Advice To Counsel* letter for detailed information and guidelines regarding compensation issues. Counsel appointed in death penalty matters should review the court's separate *Death Penalty Advice To Counsel* letter. Copies of those letters may be obtained from the Clerk of Court. *See* www.ca10.uscourts.gov/cja.cfm

Although the Act provides for limited compensation, the court recognizes that the compensation afforded often does not reflect the true value of the services rendered. Consequently, it is the court's policy not to cut or reduce claims which are reasonable and necessary. If the court determines a claim must be cut it will provide the attorney notice and an opportunity to cure the defect.

B. *Other Payments*

Except as authorized or directed by the court, no appointed attorney and no person or organization authorized by the court to furnish representation under the Act may request or accept any payment or promise of payment for representation of a defendant.

IX. Application of Guidelines

Appointment of counsel under the Act will be governed generally by the Guidelines for Administration of the Criminal Justice Act. *See* VII Guide to Judiciary Policies and Procedures, Appointment of Counsel in Criminal Cases, Section A.

ADDENDUM II

PLAN FOR APPOINTMENT OF COUNSEL IN SPECIAL CIVIL APPEALS

PURPOSE:

To provide representation in special cases for persons who are financially unable to obtain the services of counsel.

CRITERIA:

Under this plan, the court may appoint counsel to represent a party or parties to a civil matter pending before the court when:

1. the person is financially unable to obtain the services of counsel;

2. the person is not entitled to appointed counsel under the provisions of the Criminal Justice Act or other source of legal assistance;

3. the litigation presents complex and significant legal issues, the outcome of which may have wide impact;

4. it is manifestly clear that the services of counsel are necessary for the effective presentation of the issues to the court; and

5. the interests of justice require that counsel be assigned to assist the litigant who would otherwise be compelled to proceed *pro se*.

PROCEDURE:

When, upon the application of a party or upon the court's motion, it is determined that in an appeal or other proceeding criteria required by this plan are satisfied, a judge may order the appointment of counsel to represent the eligible party.

The assignment of counsel under this plan may be made from a panel of attorneys maintained pursuant to the court's plan to implement the provisions of the Criminal Justice Act or otherwise.

The appointment will remain effective throughout all stages of a proceeding in this court, including the filing of a petition for certiorari to the Supreme Court, if requested to do so by the client.

COMPENSATION:

The court is very appreciative of the service of counsel taking appointments under this plan. Due to limited resources, however, compensation for attorney's fees will normally be capped at $7,500 per representation. In addition to that reimbursement, the court will make every effort to reimburse counsel for all necessary out-of-pocket expenses. Recognizing and encouraging the pro bono aspect of these appointments, the court welcomes lawyers to waive fees and submit requests for reimbursement of expenses only.

Reimbursement for fees and reasonable and necessary out-of-pocket expenses, will be subject to limitations similar to those prescribed by the Criminal Justice Act, and will be paid from the court's Attorney Admission Fund. At the conclusion of the proceedings, counsel appointed under this plan must submit an itemized statement showing the number of hours expended, as well as out-of-pocket expenses. The chief judge, or any judge on the panel assigned to the appeal or other proceeding, may authorize payment from the Attorney Admission Fund.

Counsel appointed and compensated under this plan may not accept additional payments from their clients or anyone on their behalf.

ADDENDUM III

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PLAN FOR ATTORNEY DISCIPLINARY ENFORCEMENT

Section 1. Definitions.

1.1 "The Court" means the United States Court of Appeals for the Tenth Circuit.

1.2 "Another Court" means any court of the United States, the District of Columbia, or any state, territory, or commonwealth of the United States.

1.3 "Serious Crime" means any felony or any lesser crime involving false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit such a lesser crime.

1.4 "Disciplinary Panel" means a panel of judges specially constituted to consider an attorney disciplinary matter.

1.5 "Attorney" means any attorney admitted to practice or who has appeared before this court.

Section 2. Grounds for Discipline.

An attorney may be disciplined by this court as a result of:

2.1 conviction in another court of a serious crime;

2.2 disbarment or suspension or reprimand by another court, with or without the attorney's consent, or the resignation from the bar of another court while an investigation into allegations of misconduct is pending;

2.3 any act or omission which violates the federal laws or federal statutes or Federal Rules of Appellate Procedure, the rules of this court, orders or other

instructions of this court, or the Code of Professional Responsibility adopted by the highest court of any state to which the attorney is admitted to practice.

Section 3. Disciplinary Sanctions.

3.1 Discipline may consist of (a) disbarment, (b) suspension from practice before the court for a definite or indefinite period, (c) reprimand, (d) monetary sanction, (e) removal from the roster of attorneys eligible for appointment as court-appointed counsel, or (f) any other sanction that the court may deem appropriate.

3.2 The identical discipline imposed by another court may be appropriate for discipline imposed as a result of that other court's suspension or disbarment or reprimand of an attorney; however, any discipline imposed by another court will not limit the range of disciplinary sanctions available to the disciplinary panel or a panel of the court of appeals.

3.3 A monetary sanction imposed on disciplinary grounds is the personal responsibility of the attorney disciplined, and may not be reimbursed by a client directly or indirectly. Notice to that effect is to be sent to the client by the Clerk whenever a monetary sanction is imposed.

3.4 Proceedings for the award of damages, costs, expenses, or attorney's fees under 28 U.S.C. § 1927, Fed. R. App. P. 38, or 10th Cir. R. 46.5(D)(4) are not covered by this Plan.

Section 4. Discipline Imposed by a Panel of the Court or by a Disciplinary Panel.

4.1 A panel of the court may impose in a case pending before it any sanction other than suspension or disbarment in accordance with Section 4.2.

4.2 Before imposing a sanction, a panel of the court will notify the attorney of the alleged conduct which may justify sanction and afford the attorney an opportunity to be heard, in writing or in person at the option of the panel.

4.3 Any matter of attorney discipline in which suspension or disbarment may be considered an appropriate sanction will be referred to a disciplinary panel or, in the case of an uncontested matter, to the chief judge or chief judge's designee. The disciplinary panel consists of three active circuit judges ~~who are~~

~~randomly selected for~~appointed by the ~~particular proceeding~~Chief Judge. The judge most senior in service on the court will be designated and serve as chair. If any member of the disciplinary panel is unable to hear a particular matter, the chief judge will designate another active circuit judge as a member of the panel to hear that matter.

4.4 The disciplinary panel may at any time appoint counsel to investigate or to prosecute a disciplinary matter. Generally, the court will appoint as disciplinary counsel the disciplinary agency of the highest court of the state in which the attorney maintains his or her principal office. If no such disciplinary agency exists or such disciplinary agency declines appointment or such appointment is clearly inappropriate, this court will appoint as disciplinary counsel one or more members of the bar of this court to investigate allegations of misconduct or to prosecute disciplinary proceedings.

4.5 The disciplinary panel may designate a special master for purposes of conducting an evidentiary hearing. The special master may establish whatever procedural and evidentiary rules are appropriate. At the conclusion of the evidentiary hearing, the special master must promptly make a report of findings to the disciplinary panel.

Section 5. Duties of Clerk.

5.1 Upon being informed that an attorney admitted to practice before this court has been either convicted of any crime or subjected to discipline by another court, the clerk will determine whether a copy of the judgment of conviction or disciplinary judgment or order has been forwarded to this court. If not, the clerk will promptly obtain a copy of the judgment of conviction or disciplinary judgment or order and file it with this court.

5.2 Whenever any person is disbarred, suspended, or reprimanded, on consent or otherwise, or otherwise disciplined by this court and is shown on the records of the court to be admitted to practice in any other jurisdiction or before any other court, the clerk will, within ten days of that disbarment, suspension, reprimand, or imposition of discipline transmit to the disciplinary authorities in such other jurisdiction or for such other court, a certified copy of the judgment or order of disbarment, suspension, censure, reprimand or discipline, as well as the last known office address of the attorney.

5.3 The clerk shall refer to the disciplinary panel or the chief judge or the chief judge's designee all information received concerning disbarments, suspensions, resignations during the pendency of misconduct investigations, and other conduct sufficient to cast doubt upon the continuing qualification of a member of the bar to practice before it.

Section 6. Initiation of Disciplinary Proceedings.

6.1 Upon the receipt of a copy of a judgment, order, or other court document demonstrating that an attorney has been convicted of a serious crime, has been either suspended or disbarred or reprimanded by another court, or has resigned from the bar of another court during the pendency of a misconduct investigation, the clerk shall issue an order directing the attorney to show cause why the court should not impose upon the attorney the discipline described in Section 3. With the order to show cause, the clerk also may send a copy of the judgment of conviction or disciplinary judgment, order, or other court document indicating the form of disciplinary action.

6.2 When misconduct or allegations of misconduct concerning the appellate process which, if substantiated, would warrant discipline on the part of an attorney comes to the attention of the clerk or a judge, whether by complaint, grievance, or otherwise, the clerk shall issue an order to show cause why discipline should not be imposed by this court. The order will set forth the alleged conduct which is the subject of the proceeding and the reason the conduct may justify such discipline. If the disciplinary panel determines that cause does not exist for disciplinary action, the proceeding will be dismissed with appropriate notice.

6.3 All orders to show cause under this section will require the attorney to respond within twenty (20) days. In the response to the order to show cause, the attorney must include a declaration of the other bars to which the attorney is admitted.

Section 7. Uncontested Proceedings.

7.1 If an attorney fails to timely respond to an order to show cause the clerk will notify the chief judge or the chief judge's designee. The judge may then direct entry of an order imposing discipline as indicated.

7.2 Any attorney who is the subject of an investigation by this court into allegations of misconduct may consent to disbarment by filing with the clerk an affidavit stating that the attorney desires to consent to disbarment.

Section 8. Contested Proceedings.

All contested matters, except those before a panel under Section 4.1, will be referred to a disciplinary panel.

8.1 If an attorney's response to an order to show cause specifically requests to be heard in person in defense or in mitigation, the disciplinary panel may set the matter for a hearing before a special master. If an evidentiary hearing is held before the special master, findings of fact must be promptly prepared and forwarded to the disciplinary panel and the attorney. Exceptions to the special master's findings may be filed within ten (10) days of the date the findings are transmitted by the special master to the disciplinary panel. After the disciplinary panel has resolved any timely exceptions, it may then make a decision.

8.2 If an attorney's response to an order to show cause does not specifically request to be heard in person, the disciplinary panel may then direct entry of an order imposing discipline or take other appropriate action.

8.3 A certified copy of a judgment of conviction for any crime will be prima facie evidence of the commission of that crime in any disciplinary proceeding instituted against an attorney based upon the conviction. If the conviction is subsequently reversed or vacated, any discipline imposed on the basis thereof will be promptly reviewed by the disciplinary panel, the chief judge or the chief judge's designee upon submission of a certified copy of the relevant mandate.

8.4 A certified copy of a disciplinary judgment or order demonstrating that a member of the bar has been disbarred or suspended or reprimanded by another court will be prima facie evidence that the conduct for which the discipline was imposed in fact occurred.

8.5 An attorney to whom an order to show cause is issued pursuant to Section 6 may be represented by counsel at all hearings.

8.6 The disciplinary panel may compel by subpoena the attendance of witnesses, including the attorney whose conduct is the subject of the proceeding, and the production of pertinent documents. If a hearing is held, the disciplinary panel may compel by subpoena the attendance of any witness and the production of any document reasonably designated by the disciplinary counsel and the attorney as relevant for adequate prosecution or defense or mitigation.

8.7 If disciplinary action is imposed by this court on an attorney who has entered an appearance in a representational capacity in any type of proceeding in this court, the disciplinary panel may require the attorney to:

(a) promptly notify all clients who are represented by the attorney in this court of the nature of the disciplinary action imposed; and

(b) furnish sufficient evidence of compliance with (a).

Section 9. Suspension During Pendency of a Disciplinary Proceeding.

9.1 Upon a sufficient showing that an attorney has been convicted of a serious crime, disbarred, suspended or reprimanded, the disciplinary panel may summarily suspend the attorney's privilege to practice before this court pending the determination of appropriate discipline.

9.2 The court or the disciplinary panel, after notice and an opportunity to be heard, may suspend an attorney's privilege to practice before this court during the course of any disciplinary investigation and proceeding.

Section 10. Reinstatement.

10.1 An attorney suspended for six months or less is automatically reinstated at the end of the period of suspension upon the filing of an affidavit of compliance with the provisions of the disciplinary order. An attorney suspended for more than six months or disbarred may not resume practice until reinstated by order of the court.

10.2 An attorney who has been disbarred may not apply for reinstatement until the expiration of five years from the effective date of the disbarment.

10.3 No petition for reinstatement may be filed within one year following an adverse determination on the attorney's petition for reinstatement.

10.4 Any attorney who has been disbarred by a district court must provide proof of reinstatement to that court or demonstrate the futility of making an application to the district court.

10.5 The clerk refers petitions for reinstatement to the disciplinary panel. If the disciplinary panel is satisfied that reinstatement is appropriate based upon the findings of another court or otherwise, it will grant the petition. If the disciplinary panel is not so satisfied, the disciplinary panel may schedule a hearing by a special master on the petition. At the hearing, the petitioner has the burden of demonstrating by clear and convincing evidence that he or she has the moral qualifications, competency, and learning in the law required for admission to practice before this court and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or contrary to the public interest. The special master must submit a report and recommendation to the disciplinary panel who will act upon the petition.

10.6 Reinstatement may be on such terms and conditions as the disciplinary panel directs. If the attorney has been disbarred or suspended for five years or more, this may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice.

10.7 A condition precedent to reinstatement under this rule is payment of the prevailing attorney admission fee. That requirement is in addition to any other terms and conditions imposed by the disciplinary panel.

Section 11. Service of Papers and Other Notices.

11.1 Service of an order to show cause instituting formal disciplinary proceedings will be made by personal service or by certified mail addressed to the attorney at the last known office address as shown on the records or in

the most recent pleading or other document filed by the attorney in the course of any proceeding before this court. Service also will be deemed complete if the notice is addressed to counsel for the attorney.

Section 12. Payment of Fees and Costs.

12.1 At the conclusion of any disciplinary investigation or prosecution, if any, under these rules, disciplinary counsel may make application to this court for an order awarding reasonable attorney's fees and reimbursing costs expended in the course of such disciplinary investigation or prosecution. The court may require the attorney to pay such reasonable attorney's fees and costs.

Section 13. Access to Disciplinary Information.

13.1 Subject to 13.3 of this plan, orders to show cause why discipline should not be imposed, orders imposing discipline, records created by the disciplinary panel, are public records and are accessible to the public in the same manner as other records of the court.

13.2 Subject to 13.3 of this plan, hearings before the special master are open to the public.

13.3 The court or the disciplinary panel may, upon application and for good cause, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential and direct that the proceedings be conducted so as to implement the order.

ADDENDUM IV

RULES GOVERNING COMPLAINTS OF JUDICIAL MISCONDUCT AND DISABILITY

UNITED STATES COURTS FOR THE TENTH CIRCUIT

Preface to the Rules

Sections 351 to 364 of title 28 of the United States Code provide a way for any person to complain about a federal judge who the person believes "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" or "is unable to discharge all the duties of office by reason of mental or physical disability." It also permits the judicial councils of the circuits to adopt rules for the consideration of these complaints. These rules have been adopted under that authority.

Complaints are filed with the circuit executive on a form that has been developed for that purpose. Each complaint is referred first to the chief judge of the circuit, who decides whether the complaint raises an issue that should be investigated. (If the complaint is about the chief judge, another judge will make this decision; *see* rule 18(f).)

Please note that the judicial misconduct procedure is not a means for challenging a judge's allegedly wrong decisions–even very wrong decisions–in particular cases. A complaint that a judge has exhibited bias toward a particular person, made an improper ruling or series of rulings in a particular case, treated a person or party unfairly, or wrongly decided a case, is not a ground for relief under Section 351 et seq. An appeal or a petition for writ of mandamus may be an appropriate means for seeking relief for this type of conduct.

The chief judge will dismiss a complaint if it does not properly raise a problem that is appropriate for consideration under Section 351 et seq. The chief judge may also conclude the complaint proceeding if the problem has been corrected or if intervening events have made action on the complaint unnecessary. If the complaint is not disposed of in either of these two ways, the chief judge will appoint a special committee to investigate the complaint. The

special committee makes its report to the judicial council of the circuit, which decides what action, if any, should be taken. The judicial council is a body that consists of the chief circuit judge, four judges of the court of appeals and four district judges.

The rules provide, in some circumstances, for review of decisions of the chief judge or the judicial council.

Rev. 6/03

Chapter I: Filing a Complaint

RULE 1. WHEN TO USE THE COMPLAINT PROCEDURE

(a) Purpose of the procedure. The purpose of the complaint procedure is to improve the administration of justice in the federal courts by taking action when judges have engaged in conduct that does not meet the standards expected of federal judicial officers or are physically or mentally unable to perform their duties. The law's purpose is essentially forward-looking and not punitive. The emphasis is on correction of conditions that interfere with the proper administration of justice in the courts.

(b) What may be complained about. The law authorizes complaints about United States circuit judges, district judges, bankruptcy judges, or magistrate judges who have "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" or who are "unable to discharge all the duties of office by reason of mental or physical disability."

"Conduct prejudicial to the effective and expeditious administration of the business of the courts" is not a precise term. It includes such things as use of the judge's office to obtain special treatment for friends and relatives, acceptance of bribes, improperly engaging in discussions with lawyers or parties to cases in the absence of representatives of opposing parties, and other abuses of judicial office. It does not include making wrong decisions — even very wrong decisions — in cases. The law provides that a complaint may be dismissed if it is "directly related to the merits of a decision or procedural ruling."

"Mental or physical disability" may include temporary conditions as well as permanent disability.

(c) Who may be complained about. The complaint procedure applies to judges of the United States courts of appeals, judges of United States district courts, judges of United States bankruptcy courts, and United States magistrate judges. These rules apply, in particular, only to judges of the Court of Appeals for the Tenth Circuit and to district judges, bankruptcy judges, and magistrate judges of federal courts within the circuit. The circuit includes the States of Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming.

Complaints about other officials of federal courts should be made to their supervisors in the various courts. If such a complaint cannot be satisfactorily resolved at lower levels, it may be referred to the chief judge of the court in which the official is employed. The circuit executive is sometimes able to provide assistance in resolving such complaints.

(d) Time for filing complaints. A complaint may be filed at any time. However, complaints should be filed promptly. A complaint may be dismissed if it is filed so long after the events in question that the delay will make fair consideration of the matter impossible. A complaint may also be dismissed if it does not indicate the existence of a current problem with the administration of the business of the courts.

(e) Limitations on use of the procedure. The complaint procedure is not intended to provide a means of obtaining review of a judge's decision or ruling in a case. The judicial council of the circuit, the body that takes action under the complaint procedure, does not have the power to change a decision or ruling. Only a court can do that.

The complaint procedure may not be used to have a judge disqualified from sitting on a particular case. A motion for disqualification should be made in the case.

Also, the complaint procedure may not be used to force a ruling on a particular motion or other matter that has been before the judge too long. A petition for mandamus can sometimes be used for that purpose.

(f) Abuse of the complaint procedure. A complainant who has filed vexatious, repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After affording the offending complainant an opportunity to show cause in writing why his or her ability to file further complaints should not be limited, the judicial council may restrict or impose conditions upon the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any restrictions or conditions imposed.

RULE 2. HOW TO FILE A COMPLAINT

(a) Form. Complaints should be filed on the official form for filing complaints in the Tenth Circuit, which is reproduced in the appendix to these rules. Forms may be obtained by writing or telephoning:

Office of the Circuit Executive
United States Courts for the Tenth Circuit
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-2067

Forms may be picked up in person at the office of the clerk of the court of appeals or any district court or bankruptcy court within the circuit. Forms may also be obtained through the internet by accessing the Circuit's website at www.ca10.uscourts.gov.

(b) Statement of facts. A statement should be attached to the complaint form, setting forth with particularity the facts that the claim of misconduct or disability is based on. The statement should not be longer than five pages (five sides), and the paper size should not be larger than the paper the form is printed on. Normally, the statement of facts will include:

(1) a statement of what occurred;

(2) the time and place of the occurrence or occurrences;

(3) any other information that would assist an investigator in checking the facts, such as the presence of a court reporter or other witness and their names and addresses.

(c) Legibility. Complaints should be typewritten if possible. If not typewritten, they must be legible.

(d) Submission of documents. Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, the statement of facts should refer to the specific pages in the documents on which relevant material appears.

(e) Number of copies. If the complaint is about a single judge of the court of appeals, three copies of the complaint form, the statement of facts, and any documents submitted must be filed. If it is about a single district judge or magistrate judge, four copies must be filed; if about a single bankruptcy judge, five copies. If the complaint is about more than one judge, enough copies must be filed to provide one for the circuit executive, one for the chief judge of the circuit, one for each judge complained about, and one for each judge to whom the circuit executive must send a copy under rule 3(a)(2).

(f) Signature and oath. The form must be signed and the truth of the statements verified in writing under oath. As an alternative to taking an oath, the complainant may declare under penalty of perjury that the statements are true. The complainant's address must also be provided.

(g) Anonymous complaints. Anonymous complaints are not handled under these rules. However, anonymous complaints received by the circuit executive will be forwarded to the chief judge of the circuit for such action as the chief judge considers appropriate. *See* rules 2(j) and 20.

(h) Where to file. Complaints should be sent to:

Office of the Circuit Executive
United States Courts for the Tenth Circuit
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257

The envelope should be marked "Complaint of Misconduct" or "Complaint of Disability." The name of the judge complained about should *not* appear on the envelope.

(i) No fee required. There is no filing fee for complaints of misconduct or disability.

(j) Chief judge's authority to initiate complaint. In the interest of effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint as authorized by 28 U.S.C. § 351(b) and thereby dispense with the filing of a written complaint. A chief judge who has identified a complaint under this rule

will not be considered a complainant and, subject to the second sentence of rule 18(a), will perform all functions assigned to the chief judge under these rules for the determination of complaints filed by a complainant.

RULE 3. ACTION BY THE CIRCUIT EXECUTIVE UPON RECEIPT OF A COMPLAINT

(a) Receipt of complaint in proper form.

(1) Upon receipt of a complaint against a judge filed in proper form under these rules, the circuit executive will open a file, assign a docket number, and acknowledge receipt of the complaint. The circuit executive will promptly send copies of the complaint to the chief judge of the circuit (or the judge authorized to act as chief judge under rule 18(f)) and to each judge whose conduct is the subject of the complaint. The original of the complaint will be retained by the circuit executive.

Upon the issuance of an order by the chief judge identifying a complaint under rule 2(j), the circuit executive will thereafter expeditiously process such complaint as otherwise provided by these rules.

(2) If a district judge or magistrate judge is complained about, the circuit executive will also send a copy of the complaint to the chief judge of the district court in which the judge or magistrate judge holds his or her appointment. If a bankruptcy judge is complained about, the circuit executive will send copies to the chief judges of the district court and the bankruptcy court. However, if the chief judge of a district court or bankruptcy court is a subject of the complaint, the chief judge's copy will be sent to the judge of such court in regular active service who is most senior in date of commission among those who are not subjects of the complaint.

(b) Receipt of complaint about official other than a judge of the Tenth Circuit. If the circuit executive receives a complaint about an official other than a judge of the Tenth Circuit, the circuit executive will not accept the complaint for filing and will advise the complainant in writing of the procedure for processing such complaints.

(c) Receipt of complaint about a judge of the Tenth Circuit and another official. If a complaint is received about a judge of the Tenth Circuit and another official, the circuit executive will accept the complaint for filing only with regard to the judge, and will advise the complainant accordingly.

(d) Receipt of complaint not in proper form. If the circuit executive receives a complaint against a judge of this circuit that uses the complaint form but does not comply with the requirements of rule 2, the circuit executive will normally not accept the complaint for filing and will advise the complainant of the appropriate procedures. If a complaint against a judge is received in letter form, the circuit executive will normally not accept the letter for filing as a complaint, will advise the writer of the right to file a formal complaint under these rules, and will enclose a copy of these rules and the accompanying forms.

Chapter II: Review of a Complaint by the Chief Judge

RULE 4. REVIEW BY THE CHIEF JUDGE

(a) Purpose of chief judge's review. When a complaint in proper form is sent to the chief judge by the circuit executive's office, the chief judge will review the complaint to determine whether it should be (1) dismissed, (2) concluded on the ground that corrective action has been taken, (3) concluded because intervening events have made action on the complaint no longer necessary, or (4) referred to a special committee.

(b) Inquiry by chief judge. In determining what action to take, the chief judge may conduct a limited inquiry for the purpose of determining (1) whether appropriate corrective action has been or can be taken without the necessity for a formal investigation, (2) whether intervening events have made action on the complaint unnecessary, and (3) whether the facts stated in the complaint are either plainly untrue or are incapable of being established through investigation. For this purpose, the chief judge may request the judge whose conduct is complained of to file a written response to the complaint. The chief judge may also communicate orally or in writing with the complainant, the judge whose conduct is complained of, and other people who may have knowledge of the matter, and may review any transcripts or other relevant documents.

(c) Dismissal. A complaint will be dismissed if the chief judge concludes:

(1) that the claimed conduct, even if the claim is true, is not "conduct prejudicial to the effective and expeditious administration of the business of the courts" and does not indicate a mental or physical disability resulting in inability to discharge the duties of office;

(2) that the complaint is directly related to the merits of a decision or procedural ruling;

(3) that the complaint is frivolous, a term that includes making charges that are wholly unsupported or lacking sufficient evidentiary support to raise an inference that some kind of cognizable misconduct has occurred, or alleging facts that are shown by a limited inquiry

pursuant to rule 4(b) to be either plainly untrue or incapable of being established through investigation; or

(4) that, under the statute, the complaint is otherwise not appropriate for consideration.

(d) Corrective action. The complaint proceeding will be concluded if the chief judge determines that appropriate action has been taken to remedy the problem raised by the complaint or that action on the complaint is no longer necessary because of intervening events.

(e) Appointment of special committee. If the complaint is not dismissed or concluded, the chief judge will promptly appoint a special committee, constituted as provided in rule 9, to investigate the complaint and make recommendations to the judicial council. However, ordinarily a special committee will not be appointed until the judge complained about has been invited to respond to the complaint and has been allowed a reasonable time to do so. In the discretion of the chief judge, separate complaints may be joined and assigned to a single special committee; similarly, a single complaint about more than one judge may be severed and more than one special committee appointed.

(f) Notice of chief judge's action.

(1) If the complaint is dismissed or the proceeding concluded on the basis of corrective action taken or because intervening events have made action on the complaint unnecessary, the chief judge will prepare an order that sets forth the allegations of the complaint and the reasons for the disposition. The order will not include the name of the complainant or of the judge whose conduct was complained of. The order will be provided to the complainant, the judge, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2). The complainant will be notified of the right to petition the judicial council for review of the decision and of the deadline for filing a petition.

(2) If a special committee is appointed, the chief judge will notify the complainant, the judge whose conduct is complained of, and any judge entitled to receive a copy of the complaint pursuant to rule

3(a)(2) that the matter has been referred, and will inform them of the membership of the committee.

(g) Public availability of chief judge's decision. Materials related to the chief judge's decision will be made public at the time and in the manner set forth in rule 17.

(h) Allegations of criminal conduct. If a chief judge dismisses, solely for lack of jurisdiction under 28 U.S.C. § 351 *et seq*., non-frivolous allegations of criminal conduct by a judge, the chief judge's order of dismissal shall inform the complainant that the dismissal does not prevent the complainant from bringing any allegation of criminal conduct to the attention of appropriate federal or state criminal authorities. If, in this situation, the allegations of criminal conduct were originally referred to the circuit by a Congressional committee or member of Congress, the chief judge — if no petition for review of the dismissal is filed within the thirty-day period specified by rule 6(a) — shall notify the Congressional committee or member that the Judiciary has concluded that it lacks jurisdiction under § 351 *et seq*.

Chapter III: Review of Chief Judge's Disposition of a Complaint

RULE 5. PETITION FOR REVIEW OF CHIEF JUDGE'S DISPOSITION

If the chief judge dismisses a complaint or concludes the proceeding on the ground that corrective action has been taken or that intervening events have made action unnecessary, a petition for review may be addressed to the judicial council of the circuit. The judicial council may affirm the order of the chief judge, return the matter to the chief judge for further action, or, in exceptional cases, take other appropriate action.

RULE 6. HOW TO PETITION FOR REVIEW OF A DISPOSITION BY THE CHIEF JUDGE

(a) Time. A petition for review must be received in the office of the circuit executive within thirty days of the date of the circuit executive's letter to the complainant transmitting the chief judge's order.

(b) Form. A petition should be in the form of a letter, addressed to the circuit executive, beginning "I hereby petition the judicial council for review of the chief judge's order . . . ." There is no need to enclose a copy of the original complaint.

(c) Legibility. Petitions should be typewritten if possible. If not typewritten, they must be legible.

(d) Number of copies. Only an original is required.

(e) Statement of grounds for petition. The letter should set forth a *brief* statement of the reasons why the petitioner believes that the chief judge should not have dismissed the complaint or concluded the proceeding. It should not repeat the complaint; the complaint will be available to members of the circuit council considering the petition.

(f) Signature. The letter must be signed.

(g) Where to file. Petition letters should be sent to:

Office of the Circuit Executive
United States Courts for the Tenth Circuit
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257

The envelope should be marked "Misconduct Petition" or "Disability Petition." The name of the judge complained about should *not* appear on the envelope.

(h) No fee required. There is no fee for filing a petition under this procedure.

RULE 7. ACTION BY THE CIRCUIT EXECUTIVE UPON RECEIPT OF A PETITION FOR REVIEW

(a) Receipt of timely petition in proper form. Upon receipt of a petition for review filed within the time allowed and in proper form under these rules, the circuit executive will acknowledge receipt of the petition. The circuit executive will promptly notify each member of the judicial council of the petition, except for any member disqualified under rule 18, and make available to each member copies of (1) the complaint form and statement of facts, (2) any response filed by the judge, (3) the chief judge's order disposing of the complaint, (4) the petition for review, and (5) any other documents in the files of the circuit executive submitted by the complainant. The circuit executive will also make the same materials available to the chief judge of the circuit and each judge whose conduct is at issue.

(b) Receipt of untimely petition. The circuit executive will refuse to accept a petition that is received after the deadline set forth in rule 6(a).

(c) Receipt of timely petition not in proper form. Upon receipt of a petition filed within the time allowed but not in proper form under these rules (including a document that is ambiguous about whether a petition for review is intended), the circuit executive will acknowledge receipt of the petition, call the petitioner's attention to the deficiencies, and give the petitioner the opportunity to correct the deficiencies within fifteen days of

the date of the circuit executive's letter or within the original deadline for filing the petition, whichever is later. If the deficiencies are corrected within the time allowed, the circuit executive will proceed in accordance with paragraph (a) of this rule. If the deficiencies are not corrected, the circuit executive will reject the petition.

RULE 8. REVIEW BY THE JUDICIAL COUNCIL OF A CHIEF JUDGE'S ORDER

(a) Voting. Each member of the judicial council entitled to vote on a petition for review will communicate the member's position on the matter to the circuit executive. Members may vote to (1) affirm the chief judge's disposition, or (2) place the petition on the agenda of a meeting of the judicial council. Members may also indicate that they have disqualified themselves from participating in consideration of the petition.

Votes will be tabulated when all members of the judicial council entitled to vote have either voted or indicated that they are disqualified. After seven days from the date members of the judicial council were notified of the petition, votes may be tabulated if they have been cast by at least two-thirds of the members entitled to vote.

If all of the votes cast are for affirmance, the chief judge's order will be affirmed. The petition will be placed on the agenda of a council meeting if any of the members votes to do so.

(b) Vote at meeting of judicial council. If a petition is placed on the agenda of a meeting of the judicial council, council action may be taken by a majority of the members present and voting.

(c) Rights of judge complained about.

(1) At any time after the filing of a petition for review by a complainant, the judge complained about may file a written response with the circuit executive. The circuit executive will promptly distribute copies of the response to each member of the judicial council who is not disqualified, to the chief judge, and to the complainant. The judge may not communicate with individual council members about the matter, either orally or in writing.

(2) The judge complained about will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant.

(d) Notice of council decision.

(1) The order of the judicial council, together with any accompanying memorandum in support of the order, will be provided to the complainant, the judge, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2).

(2) If the decision is unfavorable to the complainant, the complainant will be notified that the law provides for no further review of the decision.

(3) Any memorandum supporting a council order will not include the name of the complainant or the judge whose conduct was complained of. If the order of the council affirms the chief judge's disposition, a supporting memorandum will be prepared only if the judicial council concludes that there is a need to supplement the chief judge's explanation.

(e) Public availability of council decision. Materials related to the council's decision will be made public at the time and in the manner set forth in rule 17.

Chapter IV: Investigation and Recommendation by Special Committee

RULE 9. APPOINTMENT OF SPECIAL COMMITTEE

(a) Membership. A special committee appointed pursuant to rule 4(e) will consist of the chief judge of the circuit and equal numbers of circuit and district judges. If the complaint is about a district judge, bankruptcy judge, or magistrate judge, the district judge members of the committee will be from districts other than the district of the judge complained about.

(b) Presiding officer. At the time of appointing the committee, the chief judge will designate one of its members (who may be the chief judge)

as the presiding officer. When designating another member of the committee as the presiding officer, the chief judge may also delegate to such member the authority to direct the circuit executive to cause the clerk of the court of appeals to issue subpoenas related to proceedings of the committee in accordance with 28 U.S.C. § 332(d)(1).

(c) Bankruptcy judge or magistrate judge as adviser. If the judicial officer complained about is a bankruptcy judge or magistrate judge, the chief judge may designate a bankruptcy judge or magistrate judge, as the case may be, to serve as an adviser to the committee. The chief judge will designate such an adviser if, within ten days of notification of the appointment of the committee, the bankruptcy judge or magistrate judge complained about requests that an adviser be designated. The adviser will be from a district other than the district of the bankruptcy judge or magistrate judge complained about. The adviser will not vote but will have the other privileges of a member of the committee.

(d) Provision of documents. The circuit executive will send to each member of the committee and to the adviser, if any, copies of (1) the complaint form and statement of facts, and (2) any other documents on file pertaining to the complaint (or to that portion of the complaint referred to the special committee).

(e) Continuing qualification of committee members. A member of a special committee who was qualified at the time of appointment may continue to serve on the committee even though the member relinquishes the position of chief judge, active circuit judge, or active district judge, as the case may be, but only if the member continues to hold office under article III, section 1, of the Constitution of the United States.

(f) Inability of committee member to complete service. In the event that a member of a special committee can no longer serve because of death, disability, disqualification, resignation, retirement from office, or other reason, the chief judge of the circuit will determine whether to appoint a replacement member, either a circuit or district judge as the case may be. However, no special committee appointed under these rules will function with only a single member, and the quorum and voting requirements for a two-member committee will be applied as if the committee had three members.

RULE 10. CONDUCT OF AN INVESTIGATION

(a) Extent and methods to be determined by committee. Each special committee will determine the extent of the investigation and the methods of conducting it that are appropriate in the light of the allegations of the complaint. If, in the course of the investigation, the committee develops reason to believe that the judge may have engaged in misconduct that is beyond the scope of the complaint, the committee may, with written notice to the judge, expand the scope of the investigation to encompass such misconduct.

(b) Criminal matters. In the event that the complaint alleges criminal conduct on the part of a judge, or in the event that the committee becomes aware of possible criminal conduct, the committee will consult with the appropriate prosecuting authorities to the extent permitted by 28 U.S.C. § 360 in an effort to avoid compromising any criminal investigation. However, the committee will make its own determination about the timing of its activities, having in mind the importance of ensuring the proper administration of the business of the courts.

(c) Staff. The committee may arrange for staff assistance in the conduct of the investigation. It may use existing staff of the judicial branch or may arrange, through the Administrative Office of the United States Courts, for the hiring of special staff to assist in the investigation.

(d) Delegation. The committee may delegate duties in its discretion to subcommittees, to staff members, to individual committee members, or to an adviser designated under rule 9(c). The authority to exercise the committee's subpoena powers may be delegated only to the presiding officer. In the case of failure to comply with such subpoena, the judicial council or special committee may institute a contempt proceeding consistent with 28 U.S.C. § 332(d).

(e) Report. The committee will file with the judicial council a comprehensive report of its investigation, including findings of the investigation and the committee's recommendations for council action. Any findings adverse to the judge will be based on evidence in the record. The report will be accompanied by a statement of the vote by which it was

adopted, any separate or dissenting statements of committee members, and the record of any hearings held pursuant to rule 11.

(f) Voting. All actions of the committee will be by vote of a majority of all of the members of the committee.

RULE 11. CONDUCT OF HEARINGS BY SPECIAL COMMITTEE

(a) Purpose of hearings. The committee may hold hearings to take testimony and receive other evidence, to hear argument, or both. If the committee is investigating allegations against more than one judge, it may, in its discretion, hold joint hearings or separate hearings.

(b) Notice to judge complained about. The judge complained about will be given adequate notice in writing of any hearing held, its purposes, the names of any witnesses whom the committee intends to call, and the text of any statements that have been taken from such witnesses. The judge may at any time suggest additional witnesses to the committee.

(c) Committee witnesses. All persons who are believed to have substantial information to offer will be called as committee witnesses. Such witnesses may include the complainant and the judge complained about. The witnesses will be questioned by committee members, staff, or both. The judge will be afforded the opportunity to cross-examine committee witnesses, personally or through counsel.

(d) Witnesses called by the judge. The judge complained about may also call witnesses and may examine them personally or through counsel. Such witnesses may also be examined by committee members, staff, or both.

(e) Witness fees. Witness fees will be paid as provided in 28 U.S.C. § 1821.

(f) Rules of evidence; oath. The Federal Rules of Evidence will apply to any evidentiary hearing except to the extent that departures from the adversarial format of a trial make them inappropriate. All testimony taken at such a hearing will be given under oath or affirmation.

(g) Record and transcript. A record and transcript will be made of any hearing held.

RULE 12. RIGHTS OF JUDGE IN INVESTIGATION

(a) Notice. The judge complained about is entitled to written notice of the investigation (rule 4(f)), to written notice of expansion of the scope of an investigation (rule 10(a)), and to written notice of any hearing (rule 11(b)).

(b) Presentation of evidence. The judge is entitled to a hearing, and has the right to present evidence and to compel the attendance of witnesses and the production of documents at the hearing. Upon request of the judge, the chief judge or his designee will direct the circuit executive to cause the clerk of the court of appeals to issue subpoenas related to proceedings of the committee in accordance with 28 U.S.C. § 332(d)(1).

(c) Presentation of argument. The judge may submit written argument to the special committee at any time, and will be given a reasonable opportunity to present oral argument at an appropriate stage of the investigation.

(d) Attendance at hearings. The judge will have the right to attend any hearing held by the special committee and to receive copies of the transcript and any documents introduced, as well as to receive copies of any written arguments submitted by the complainant to the committee.

(e) Receipt of committee's report. The judge will have the right to receive the report of the special committee at the time it is filed with the judicial council.

(f) Representation by counsel. The judge may be represented by counsel in the exercise of any of the rights enumerated in this rule. The costs of such representation may be borne by the United States as provided in rule 14(h).

RULE 13. RIGHTS OF COMPLAINANT IN INVESTIGATION

(a) Notice. The complainant is entitled to written notice of the investigation as provided in rule 4(f). Upon the filing of the special committee's report to the judicial council, the complainant will be notified that the report has been filed and is before the council for decision. Although the complainant is not entitled to a copy of the report of the special

committee, the judicial council may, in its discretion, release a copy of the report of the special committee to the complainant.

(b) Opportunity to provide evidence. The complainant is entitled to be interviewed by a representative of the committee. If it is believed that the complainant has substantial information to offer, the complainant will be called as a witness at a hearing.

(c) Presentation of argument. The complainant may submit written argument to the special committee at any time. In the discretion of the special committee, the complainant may be permitted to offer oral argument.

(d) Representation by counsel. A complainant may submit written argument through counsel and, if permitted to offer oral argument, may do so through counsel.

Chapter V: Judicial Council Consideration of Recommendations of Special Committee

RULE 14. ACTION BY JUDICIAL COUNCIL

(a) Purpose of judicial council consideration. After receipt of a report of a special committee, the judicial council will determine whether to dismiss the complaint, conclude the proceeding on the ground that corrective action has been taken or that intervening events make action unnecessary, refer the complaint to the Judicial Conference of the United States, or order corrective action.

(b) Basis of council action. Subject to the rights of the judge to submit argument to the council as provided in rule 15(a), the council may take action on the basis of the report of the special committee and the record of any hearings held. If the council finds that the report and record provide an inadequate basis for decision, it may (1) order further investigation and a further report by the special committee or (2) conduct such additional investigation as it deems appropriate.

(c) Dismissal. The council will dismiss a complaint if it concludes:

(1) that the claimed conduct, even if the claim is true, is not "conduct prejudicial to the effective and expeditious administration of the business of the courts" and does not indicate a mental or physical disability resulting in inability to discharge the duties of office;

(2) that the complaint is directly related to the merits of a decision or procedural ruling;

(3) that the facts on which the complaint is based have not been demonstrated; or

(4) that, under the statute, the complaint is otherwise not appropriate for consideration.

(d) Conclusion of the proceeding on the basis of corrective action taken. The council will conclude the complaint proceeding if it determines that appropriate action has already been taken to remedy the problem identified in the complaint, or that intervening events make such action unnecessary.

(e) Referral to Judicial Conference of the United States. The judicial council may, in its discretion, refer a complaint to the Judicial Conference of the United States with the council's recommendations for action. It is required to refer such a complaint to the Judicial Conference of the United States if the council determines that a circuit judge or district judge may have engaged in conduct:

(1) that might constitute ground for impeachment; or

(2) that, in the interest of justice, is not amenable to resolution by the judicial council.

(f) Order of corrective action. If the complaint is not disposed of under paragraphs (c) through (e) of this rule, the judicial council will take other action to assure the effective and expeditious administration of the business of the courts. Such action may include, among other measures:

(1) censuring or reprimanding the judge, either by private communication or by public announcement;

(2) ordering that, for a fixed temporary period, no new cases be assigned to the judge;

(3) in the case of a magistrate judge, ordering the chief judge of the district court to take action specified by the council, including the initiation of removal proceedings pursuant to 28 U.S.C. § 631(i);

(4) in the case of a bankruptcy judge, removing the judge from office pursuant to 28 U.S.C. § 152;

(5) in the case of a circuit or district judge, requesting the judge to retire voluntarily with the provision (if necessary) that ordinary length-of-service requirements will be waived; and

(6) in the case of a circuit or district judge who is eligible to retire but does not do so, certifying the disability of the judge under 28 U.S.C. § 372(b) so that an additional judge may be appointed.

(g) Combination of actions. Referral of a complaint to the Judicial Conference of the United States under paragraph (e) or to a district court under paragraph (f)(3) of this rule will not preclude the council from simultaneously taking such other action under paragraph (f) as is within its power.

(h) Recommendation about fees. Upon the request of a judge whose conduct is the subject of a complaint, the judicial council may, if the complaint has been finally dismissed, recommend that the Director of the Administrative Office of the United States Courts award reimbursement, from funds appropriated to the Judiciary, for those reasonable expenses, including attorney's fees, incurred by that judge during the investigation, which would not have been incurred but for the requirements of 28 U.S.C. § 351 *et seq*. and these rules.

(i) Notice of action of judicial council. Council action will be by written order, which will include the factual determinations on which it is based and the reasons for the council action. The order will not include the name of the complainant or of the judge whose conduct was complained about. The order will be provided to the complainant, the judge, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2). However, if the complaint has been referred to the Judicial Conference of the

United States pursuant to paragraph (e) of this rule and the council determines that disclosure would be contrary to the interests of justice, such disclosure need not be made. The complainant and the judge will be notified of any right to seek review of the judicial council's decision by the Judicial Conference of the United States and of the procedure for filing a petition for review.

(j) Public availability of council action. Materials related to the council's action will be made public at the time and in the manner set forth in rule 17.

(k) Allegations of criminal conduct. If a judicial council dismisses, solely for lack of jurisdiction under 28 U.S.C. § 351 *et seq*., non-frivolous allegations of criminal conduct by a judge, the judicial council's order of dismissal shall inform the complainant that the dismissal does not prevent the complainant from bringing any allegation of criminal conduct to the attention of appropriate federal or state criminal authorities. If, in this situation, the allegations of criminal conduct were originally referred to the circuit by a Congressional committee or member of Congress, the judicial council — if no petition for review of the dismissal by the Judicial Conference lies under 28 U.S.C. § 357, or if no petition for review is filed — shall notify the Congressional committee or member that the Judiciary has concluded that it lacks jurisdiction under § 351 *et seq*..

RULE 15. PROCEDURES FOR JUDICIAL COUNCIL CONSIDERATION OF A SPECIAL COMMITTEE'S REPORT

(a) Rights of judge complained about. Within ten days after the filing of the report of a special committee, the judge complained about may address a written response to all of the members of the judicial council. The judge will also be given an opportunity to present oral argument to the council, personally or through counsel. The judge may not communicate with individual council members about the matter, either orally or in writing.

(b) Conduct of additional investigation by the council. If the judicial council decides to conduct additional investigation, the judge complained about will be given adequate prior notice in writing of that decision and of the general scope and purpose of the additional investigation. The conduct of the investigation will be generally in accordance with the

procedures set forth in rules 10 through 13 for the conduct of an investigation by a special committee. However, if hearings are held, the council may limit testimony to avoid unnecessary repetition of testimony presented before the special committee.

(c) Voting. Council action will be taken by a majority of those members of the council who are not disqualified, except that a decision to remove a bankruptcy judge from office requires a majority of all the members of the council.

Chapter VI: Miscellaneous Rules

RULE 16. CONFIDENTIALITY

(a) General rule. Consideration of a complaint by the chief judge, a special committee, or the judicial council will be treated as confidential business, and information about such consideration will not be disclosed by any judge or employee of the judicial branch or any person who records or transcribes testimony except in accordance with these rules.

(b) Files. All files related to complaints of misconduct or disability, whether maintained by the circuit executive, the chief judge, members of a special committee, members of the judicial council, or staff, and whether or not the complaint was accepted for filing, will be maintained separate and apart from all other files and records, with appropriate security precautions to ensure confidentiality.

(c) Disclosure in memoranda of reasons. Memoranda supporting orders of the chief judge or the judicial council, and dissenting opinions or separate statements of members of the council, may contain such information and exhibits as the authors deem appropriate, and such information and exhibits may be made public pursuant to rule 17.

(d) Availability to Judicial Conference. In the event that a complaint is referred under rule 14(e) to the Judicial Conference of the United States, the circuit executive will provide the Judicial Conference with copies of the report of the special committee and any other documents and records that were before the judicial council at the time of its determination.

Upon request of the Judicial Conference or its Committee to Review Circuit Council Conduct and Disability Orders, in connection with their consideration of a referred complaint or a petition under 28 U.S.C. § 357 for review of a council order, the circuit executive will furnish any other records related to the investigation.

(e) Availability to district court. In the event that the judicial council directs the initiation of proceedings for removal of a magistrate judge under rule 14(f)(3), the circuit executive will provide to the chief judge of the district court copies of the report of the special committee and any other documents and records that were before the judicial council at the time of its determination. Upon request of the chief judge of the district court, the judicial council may authorize release of any other records relating to the investigation.

(f) Impeachment proceedings. The judicial council may release to the legislative branch any materials that are believed necessary to an impeachment investigation of a judge or a trial on articles of impeachment.

(g) Consent of judge complained about. Any materials from the files may be disclosed to any person upon the written consent of both the judge complained about and the chief judge of the circuit. In any disclosure the chief judge may require that the identity of the complainant, or of witnesses in an investigation conducted by a special committee or the judicial council, be shielded.

(h) Disclosure by judicial council in special circumstances. The judicial council may authorize disclosure of information about the consideration of a complaint, including the papers, documents, and transcripts relating to the investigation, to the extent that the council concludes that such disclosure is justified by special circumstances and is not prohibited by 28 U.S.C. § 360.

Such disclosure may be made to Judiciary researchers engaged in the study or evaluation of experience under 28 U.S.C. § 351 *et seq*. and related modes of judicial discipline, but only where such study or evaluation has been specifically approved by the Judicial Conference or by the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders. The judicial council should take appropriate steps (to the extent the Judicial Conference or its Committee has not already done so) to shield the

identities of the judge complained against, the complainant, and witnesses from public disclosure, and may impose other appropriate safeguards to protect against the dissemination of confidential information.

(i) Disclosure of identity by judge complained about. Nothing in this rule will preclude the judge complained about from acknowledging that he or she is the judge referred to in documents made public pursuant to rule 17.

(j) Assistance and consultation. Nothing in this rule precludes the chief judge or judicial council, for purposes of acting on a complaint filed under 28 U.S.C. § 351 *et seq*., from seeking the assistance of qualified staff, or from consulting other judges who may be helpful in the process of complaint disposition.

RULE 17. PUBLIC AVAILABILITY OF DECISIONS

(a) General rule. Under the following conditions, orders of the chief judge and the judicial council and any dissenting opinions or separate statements by members of the judicial council will be made public when final action on the complaint has been taken and is no longer subject to review.

(1) If the complaint is finally disposed of without appointment of a special committee, or if it is disposed of by council order dismissing the complaint for reasons other than mootness or because intervening events have made action on the complaint unnecessary, the publicly available materials will not disclose the name of the judge complained about without his or her consent.

(2) If the complaint is finally disposed of by censure or reprimand by means of private communication, the publicly available materials will not disclose either the name of the judge complained about or the text of the reprimand.

(3) If the complaint is finally disposed of by any other action taken pursuant to rule 14(d) or (f) except dismissal because intervening events have made action on the complaint unnecessary, the text of the dispositive order will be included in the materials made public, and the name of the judge will be disclosed.

(4) If the complaint is dismissed as moot, or because intervening events have made action on the complaint unnecessary, at any time after the appointment of a special committee, the judicial council will determine whether the name of the judge is to be disclosed.

The name of the complainant will not be disclosed in materials made public under this rule unless the chief judge orders such disclosure.

(b) Manner of making public. The records referred to in paragraph (a) will be made public by placing them in a publicly accessible file in the Office of the Circuit Executive, Byron White United States Courthouse, 1823 Stout Street, Denver, Colorado 80257. The circuit executive will send copies of the publicly available materials to the Federal Judicial Center, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, D.C. 20002, where such materials will also be available for public inspection. In cases in which memoranda appear to have precedential value, the chief judge may cause them to be published.

(c) Decisions of Judicial Conference standing committee. To the extent consistent with the policy of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, opinions of that committee about complaints arising from this circuit will also be made available to the public in the office of the circuit executive of the court of appeals.

(d) Complaints referred to the Judicial Conference of the United States. If a complaint is referred to the Judicial Conference of the United States pursuant to rule 14(e), materials relating to the complaint will be made public only as may be ordered by the Judicial Conference.

RULE 18. DISQUALIFICATION

(a) Complainant. If the complaint is filed by a judge, that judge will be disqualified from participation in any consideration of the complaint except to the extent that these rules provide for participation by a complainant. A chief judge who has identified a complaint under rule 2(j) will not be automatically disqualified from participating in the consideration of the complaint but may consider in his or her discretion whether the circumstances warrant disqualification.

(b) Judge complained about. A judge whose conduct is the subject of a complaint will be disqualified from participating in any consideration of the complaint except to the extent that these rules provide for participation by a judge who is complained about.

(c) Disqualification of chief judge on consideration of a petition for review of a chief judge's order. If a petition for review of a chief judge's order dismissing a complaint or concluding a proceeding is filed with the judicial council pursuant to rule 5, the chief judge will not participate in the council's consideration of the petition. In such a case, the chief judge may address a written communication to all of the members of the judicial council, with copies provided to the complainant and to the judge complained about. The chief judge may not communicate with individual council members about the matter, either orally or in writing.

(d) Member of special committee not disqualified. A member of the judicial council who is appointed to a special committee will not be disqualified from participating in council consideration of the committee's report.

(e) Judge under investigation. Upon appointment of a special committee, the judge complained about will automatically be disqualified from serving on (1) any special committee appointed under rule 4(e), (2) the judicial council of the circuit, (3) the Judicial Conference of the United States, and (4) the Committee to Review Circuit Council Conduct and Disability Orders of the Judicial Conference of the United States. The disqualification will continue until all proceedings regarding the complaint are finally terminated, with no further right of review.

(f) Substitute for disqualified chief judge. If the chief judge of the circuit is disqualified from participating in consideration of the complaint, the duties and responsibilities of the chief judge under these rules will be assigned to the circuit judge in regular active service who is the most senior in date of commission of those who are not disqualified. If all circuit judges in regular active service are disqualified, the judicial council may determine whether to refer the complaint to a circuit judge from another circuit pursuant to 28 U.S.C. § 291(a), or whether it is necessary, appropriate, and in the interest of sound judicial administration to permit the chief judge to dispose of the complaint on the merits. Members of the judicial council who

are named in the complaint may participate in this determination if necessary to obtain a quorum of the judicial council.

(g) Judicial council action where multiple judges are disqualified. Notwithstanding any other provision in these rules to the contrary, a member of the judicial council who is a subject of the complaint may participate in the disposition thereof if (a) participation by members who are subjects of the complaint is necessary to obtain a quorum of the judicial council, and (b) the judicial council votes that it is necessary, appropriate and in the interest of sound judicial administration that such complained-against members be eligible to act. Members of the judicial council who are subjects of the complaint may participate in this determination if necessary to obtain a quorum of the judicial council. Under no circumstances, however, shall the judge who acted as chief judge of the circuit in ruling on the complaint under rule 4 be permitted to participate in this determination.

RULE 19. WITHDRAWAL OF COMPLAINTS AND PETITIONS FOR REVIEW

(a) Complaint pending before chief judge. A complaint that is before the chief judge for a decision under rule 4 may be withdrawn by the complainant with the consent of the chief judge.

(b) Complaint pending before special committee or judicial council. After a complaint has been referred to a special committee for investigation, the complaint may be withdrawn by the complainant only with the consent of both (1) the judge complained about and (2) the special committee (before its report has been filed) or the judicial council.

(c) Petition for review of chief judge's disposition. A petition to the judicial council for review of the chief judge's disposition of a complaint may be withdrawn by the petitioner at any time before the judicial council acts on the petition.

RULE 20. AVAILABILITY OF OTHER PROCEDURES

The availability of the complaint procedure under these rules and 28 U.S.C. § 351 *et seq*. will not preclude the chief judge of the circuit or the judicial council of the circuit from considering any information that may come to their attention suggesting that a judge has engaged in conduct

prejudicial to the effective and expeditious administration of the business of the courts or is unable to discharge all the duties of office by reason of disability.

RULE 21. AVAILABILITY OF RULES AND FORMS

These rules and copies of the complaint form prescribed by rule 2 will be available without charge in the office of the circuit executive and in each office of the clerk of a district court or bankruptcy court within this circuit. They are also available on the circuit's website at www.ca10.uscourts.gov.

RULE 22. EFFECTIVE DATE

These rules apply to complaints filed on or after August 1, 2002. The handling of complaints filed before that date will be governed by the rules previously in effect.

RULE 23. ADVISORY COMMITTEE

The advisory committee appointed by the Court of Appeals for the Tenth Circuit for the study of rules of practice and internal operating procedures shall also constitute the advisory committee for the study of these rules, as provided by 28 U.S.C. § 2077(b), and shall make any appropriate recommendations to the circuit judicial council concerning these rules.

Rev. 6/03

JUDICIAL COUNCIL
OF THE TENTH CIRCUIT

COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

1. Complainant's name:

   Address:

   Daytime telephone:

2. Judge complained about:

3. Does this complaint concern the behavior of the judge in a particular lawsuit or lawsuits?

   ( ) Yes ( ) No

   If "yes," give the following information about each lawsuit (use the reverse side if there is more than one):

   Court:

   Docket number:

   Are (were) you a party or lawyer in the lawsuit?

   ( ) Party ( ) Lawyer ( ) Neither

   If a party, give the name, address, and telephone number of your lawyer:

Docket numbers of any appeals to the Tenth Circuit:

4. Have you filed any lawsuits against the judge?

( ) Yes ( ) No

If "yes," give the following information about each lawsuit (use the reverse side if there is more than one):

Court:

Docket number:

Present status of suit:

Name, address, and telephone number of your lawyer:

Court to which any appeal has been taken:

Docket number of the appeal:

Present status of appeal:

5. On separate sheets of paper, not larger than the paper this form is printed on, describe the conduct or the evidence of disability that is the subject of this complaint. *See* rule 2(b) and 2(d). Do not use more than 5 pages (5 sides). Most complaints do not require that much.

6. You should either:

(1) check the first box below and sign this form in the presence of a notary public; or

(2) check the second box and sign the form. You do not need a notary public if you check the second box.

( ) I swear (affirm) that--

( ) I declare under penalty of perjury that--

(a) I have read rules 1 and 2 of the Rules of the Judicial Council of the Tenth Circuit Governing Complaints of Judicial Misconduct or Disability, and

(b) The statements made in this complaint are true and correct to the best of my knowledge.

_____

Signature

_____

Date

Sworn and subscribed to before me

Date:

Notary Public:

My commission expires:

Mail this form to:

Office of the Circuit Executive
United States Courts for the Tenth Circuit
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257

Mark the envelope "JUDICIAL CONDUCT COMPLAINT"
or "JUDICIAL DISABILITY COMPLAINT."
Do not put the name of the judge on the envelope.

See RULE 2(e) for the number of copies required.